Supreme Court, U. S.
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APPENDIX

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-5822

CHARLES HAMPTON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED JANUARY 10, 1975

CERTIORARI GRANTED MARCH 31, 1975

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TABLE OF CONTENTS

	Page
List of relevant docket entries	1
Partial transcript of proceedings	4
Plaintiff's case	4
Jule Hutton	4
Terry C. Sawyer	27
James D. McDowell	44

Defendant's case 58
Charles Hampton 58
Plaintiff's rebuttal 89
Jule Hutton 89
Colloquy 93
Order denying defendant's motion for special jury instruction on the defense of entrapment 95
District Court's instructions to the jury 96
Defendant's motion for special jury instruction on defense of entrapment 104
Order correcting erroneous omission of defendant's motion for special jury instruction on defense of entrapment from the Record 105
Mandate of United States Court of Appeals for the Eighth Circuit 106
Opinion of United States Court of Appeals for the Eighth Circuit 107

LIST OF RELEVANT DOCKET ENTRIES

District Court

Date	Proceedings
1974	
Mar. 11	Deft appears with David A. Lang, his atty., waives formal arraignment and enters plea of not guilty to each of Counts 1 and 2 of indictment. Deft granted 15 days in which to file contemplated motions and cause set for trial on Mar. 25, 1974. Deft. remanded to custody of the U. S. Marshal. Ct. finds deft's age is 27 yrs.
May 3	Memo of deft in support of his request for a special instruction on the defense of entrapment and in support of any motions for a judg. of acquittal made during course of his trial, fld.
May 6	Deft appears with David A. Lang, his atty., and having heretofore entered plea of not guilty to ea. of Cts. 1 and 2 of the Ind., and cause having been set for trial this day, parties announce ready. Jury empaneled and sworn and the introduction of evidence on behalf of plff is commenced and concluded. Oral motion of deft for judg. of acquittal made at close of the Govt's case and overruled. Further proceedings on trial postponed until tomorrow at 9:45 a.m.
May 7	Again comes the deft., his atty, and the jury. The introduction of evidence on behalf of deft is commenced and concluded. Rebuttal evidence on behalf of plff commenced and concluded. Surrebuttal

evidence on behalf of deft commenced and concluded. Oral motion of deft for judg. of acquittal made at close of all the evidence and overruled. After arguments of counsel and charge by the Ct., the jury retires to consider its verdict. Thereafter the jury returns into Ct its verdict finding deft Hampton guilty as charged in ea. of Cts. 1 and 2 of the Ind. On motion of deft, the jury is polled and the Members thereof individually as called ack. said verdict as their true verdict and finding herein. Imposition of sentence deferred to May 24, 1974 at 9:30 a.m. and deft remanded to custody of the U. S. Marshal.

May 14 Motion of deft for a new trial fld. Argument requested.

May 24 Deft appears with David A. Lang, his atty., for imposition of sentence under verdict returned by a jury finding deft guilty as charged in ea. of Cts 1 and 2 of the Ind. Brief of deft in support of his motion for a new trial, heretofore fld., fld., and sd. motion is overruled. Under ea. of cts 1 and 2 of Ind., deft sentenced to imprisonment for a period of 5 yrs., followed by special parole term of 3 yrs. on ea. of sd. cts, such terms to begin and run concurrently with each other, making an aggregate term of imprisonment of 5 yrs followed by special term of parole of 3 yrs as provided by T. 21, U.S.C., Sec 841(b)(1)(A). Execution of sentence imposed herein suspended and deft placed on probation for a period of 5 yrs in accordance with conditions fld and with the special condition deft remain in the custody of the North Carolina Prison System during period of his probation. Judg & Commitment fld and entered. CC to U. S. Atty., U S Marshal and Prob. Office. (Nangle, J)

June 3 Notice of appeal of deft fr. final judg of conviction of May 24, 1974 fld.

Copy of appeal sent to U. S. Atty. and deft. c/o Corr. Inst. N.C. Certified copy of appeal and 2 certified copies of Clerk's docket entries delivered to Clerk of U.S.C.A., 8th Circuit.

June 12 Marshal's return to J & C. fld. Deft. delivered to State Authorities for North Carolina 5/28/74.

June 26 Original documents requested and certified copy of Clerk's docket entries delivered to Clerk of U.S. C.A., 8th Circuit. Two additional sets delivered.

Dec. 11 Opinion and Mandate of United States Court of Appeals for the Eighth Circuit affirming judgment and commitment of District Court.

United States District Court
Eastern District of Missouri
Eastern Division

United States of America,
Plaintiff,
v.
Charles Hampton, a/k/a Michael Byers,
Defendant.
Cause No. 74 96 CR(4).

PARTIAL TRANSCRIPT OF PROCEEDINGS

PLAINTIFF'S CASE

[*30] **JULE HUTTON,**
being produced, sworn and examined in behalf of plaintiff, testified as follows:

Direct Examination

By Mr. Dye

Q. State your name, please. A. Jule Hutton.

Q. What is your occupation? A. Pre-inspector.

Q. Where do you work? A. I work at Safelite Glass.

Q. What city is that? A. Wichita, Kansas.

Q. How long have you lived in Wichita?

* Numbers appearing in brackets in text indicate page numbers of original stenographic transcript of testimony.

Mr. Lang: I can't hear the witness.

The Court: You wanted to get Mr. Hutton's occupation?

Mr. Lang: Yes, your Honor.

The Court: What is your occupation?
Is that the company you work for, S-a-l-e-l-i-t?

Mr. Dye: Safelite, your Honor.

The Witness: Yes, it is.

The Court: And your position is that of pre-inspector there.

The Witness: Pre-inspector.

Q. (By Mr. Dye) What do you do as a pre-inspector? [31] A. We make windshields. I inspect all the glass.

Q. How long have you been in that capacity? A. Approximately three weeks.

Q. Are you familiar with an individual by the name of Michael Byers, also known as Charles Hampton? A. Yes, I am.

Q. Do you see that individual in the courtroom today, please? A. Yes, I do.

Q. Would you identify him, please? A. The gentleman sitting right here with the shades on and red sweater.

Mr. Dye: May the record reflect identification, your Honor?

The Court: Yes, it so reflects.

Q. (By Mr. Dye) Directing your attention to February 25, 1974, did you have occasion to see this individual? A. Yes, I did.

Q. Did you have occasion to see an individual by the name of Terry Sawyer? A. Yes, I did.

Q. Who is Terry Sawyer? A. Special Agent for DEA, Drug Abuse Law Enforcement.

Q. I think I should backtrack a little bit and ask you **[32]** if you have ever been convicted of any felonies? A. Yes, I have.

Q. What felonies are those? A. I was convicted of burglary in 1966; I was convicted of forgery in 1973.

Q. Now, directing your attention to February 25th, you had occasion to see Agent Sawyer at that time? A. Yes, I did.

Q. Did you have occasion to talk to him on the telephone at any time? A. Yes, I did.

Q. Could you tell us about what time and what was the conversation? A. Approximately around 8:30, 8:45, late in the afternoon, I called Agent Sawyer at his home and I stated that I had met an individual by the name of Michael Byers and I had set up a heroin deal. Agent Sawyer then asked me, said, "Well, what did he have?" and I told him he had what they call a "boil", which is half a spoon, and he said, "Well, how much money do I need?" I said, "Well, I have to ask him and see." So at this time I went over to the individual known as Michael to me and asked him how much money he had to have, and he told me $155.00. I then told Special Agent Terry that he had to have $155.00.

Q. Where were you when you were making this telephone **[33]** call? A. At a tavern called The Pud on Delmar and——

Q. Is that P-u-b? A. P-u-d, d, P-u-d.

Q. P-u-d, Pud, okay. Did you have occasion to make a second telephone call that night? A. Yes, I did.

Q. What was that telephone call? A. First Agent Terry called me.

Q. I see. A. He called me back.

Q. Where did he call you? A. At the Pud Tavern.

Q. What if anything did he say? A. He told me that he had got the money together and he would meet me approximately 10:00 o'clock.

Q. And then what did you do after this telephone call? A. I then told Michael Byers that what the agent had said, that he would be here approximately 10:00 o'clock.

Q. What if anything did Mr. Byers, also known as Charles Hampton, say? A. He told me okay, and we started to playing pool for a while, and I imagine around 9:00, ten after 9:00, he left the tavern, said he would be back in a few minutes.

[34] Q. This was shortly after Agent Sawyer called you? A. Yes, it were.

Q. Approximately how long was Mr. Hampton gone? A. Approximately ten or fifteen minutes.

Q. What happened after he returned? A. After he returned he said everything was all right, and then Agent Sawyer called me again and he stated that he was down on Lindell and Kingshighway.

Q. What if anything did he say? Let me ask you this: Did you, in your previous conversation, did you determine where you might meet on that date? A. Yes, we did. That was in the first—second telephone call.

Q. Where did he say that you would meet? A. He said we would meet on Lindell and Kingshighway.

Q. What happened after this Agent Sawyer called you? What time did he call you? A. The third telephone call was around 11:00 o'clock, or quarter after.

Q. Could it have been a little earlier than that? A. Possibility.

Q. And then as a result of that telephone conversation what if anything did you do? A. I then, after I talked to him, I told him we would **[35]** be right down, I then went over and told

Michael Byers that Special Agent Terry was there, which I called him Terry.

The Court: You'll have to speak up, Mr. Hutton, so they can hear you over there.

Mr. Lang: Would you read the last question and answer?

(Whereupon, the reporter read the last question and answer.)

Q. (By Mr. Dye) What happened after your conversation with Mr. Hampton? When I say "Mr. Hampton" that also means Michael Byers, is that not correct? A. Yes.

Q. What happened after that conversation? A. Well, we then walked out of The Pud Tavern onto Delmar, where we walked up to Kingshighway and we proceeded to go east, I think it is, over to Lindell where we walked to—at first we stopped at a motel which I thought that was the street, and we found out it wasn't, then we proceeded and went on further on Kingshighway over to Lindell, where we stood on the corner for a few minutes, and I think Michael stated that he had to go get some cigarettes, and he walked into the hotel lobby. At this time Special Agent Terry and the other agent pulled up in a car. I walks over to the car and stated that he had just went into the hotel, I would go and get him.

Q. And did you in fact go in after him? **[36]** A. Yes, I did.

Q. What happened after you met him in the hotel? A. Just as I walked inside of the hotel he was going up some stairs, little step up like, and I called him. He turned around. I told him that he was here, and he in turn come on back out with me. At this time Special Agent Terry had parked on the south side of the street on the street on Kingshighway.

Q. When you say Special Agent Terry, who do you mean? What is his full name? A. Terry Sawyer.

Q. What happened then after you noticed that the agents were parking their vehicle? A. Myself and Michael walked across the street where I got into the rear seat of the passenger side and he got into the front seat on the passenger side.

Q. Was there any conversations after you got in? A. Yes, I think Michael was smoking what we call a joint, marijuana, and he stated that it was awful good stuff. At this time Special Agent Terry Sawyer asked him did he bring the package. He said, yes, he did, and he took his cap off and took out a tinfoil package.

Q. What did he do with that package? A. Well, he passed it to Special Agent Sawyer and Special Agent Sawyer attempted to open it, and started to **[37]** waste, and he told him, he said, "Wait a minute, let me do that," and Special Agent give it back to him where he opened it, and then give it back to him, Special Agent.

Q. Was there another agent in the car besides Sawyer? A. Yes, there were.

Q. Who was that, do you know? A. Special Agent Dowell, I think it is.

Q. McDowell, is it? A. McDowell.

Q. I believe you stated that the package started to waste, what do you mean by that? A. Well, the way it was wrapped, and evidently he started to open it wrong, and it just started to fall out of the package.

Q. And so then what happened after it started to fall? A. Special Agent Sawyer give it back to Michael and he opened it himself.

Q. And after Hampton opened it, what happened then? A. It was passed back to Special Agent Sawyer.

Q. Was there any further conversation at that time? A. Yes, there were. Special Agent Sawyer then passed it back to Special Agent McDowell and told him to take some and test it.

Q. What kind of a test were they talking about, if you know? **[38]** A. He was talking about a field test, marquis test.

Q. Marquis test? A. Yes.

Q. What if anything was the result of that marquis test, if you know? A. Well, Special Agent McDowell——

Mr. Lang: Your Honor, I object to this testimony as hearsay.

The Court: I'll sustain it.
Go ahead.

Q. (By Mr. Dye) After examining the substance, did Agent McDowell say anything? A. Yes, he did.

Q. What did he say? A. He said it was okay.

Q. What did he mean when he said it was okay?

Mr. Lang: Your Honor, I object to this as calling for a conclusion.

The Court: Sustained. The answer of the witness will be stricken. Go ahead.

Q. (By Mr. Dye) During the course of the conversation in the vehicle did Mr. Hampton make any reference to what the substance was that had been examined by Mr. McDowell? A. Yes, he did.

[39] Q. What did he call that, or what did he say about it? A. First he asked him how did he like that other stuff that he got, and which when you say "stuff" you mean heroin.

Q. What do you mean by "other stuff"? We've got two different dates. We're talking about February 25, 1974. After Agent McDowell examined the substance what, if anything, did he do with it? A. He passed it back to Special Agent Sawyer.

Q. Was there any discussion about the price to be paid for this substance? A. Yes, there were.

Q. What was the conversation about that? A. Special Agent Sawyer asked him could he get a better deal than the price we had agreed on, and Mr. Byers stated that the best deal he could give him was for a hundred and forty-five dollars.

Q. For a hundred and forty-five dollars? A. Yes.

Q. At that time did Agent Sawyer have any discussions with Mr. Hampton about future purchases of narcotics? A. Yes, he did.

Q. What was that conversation? A. He stated that he would like to get a larger quantity and Mr. Byers stated that he could get him some nine, I think **[40]** it were.

Q. And, if you know, what does "nine" mean? A. "Nine" means it's heroin that can be cut nine times. You can take one ounce and make nine ounces.

Q. Did Mr. Byers make any reference to how quickly he could make this transaction in the future? A. I think he stated that he had to leave town and he would be back in a couple days.

Q. Why did he have to leave town, if he said?

Mr. Lang: Your Honor, I object.

Q. (By Mr. Dye) If he said.

The Court: I'll permit it to stand. Overruled.

Q. (By Mr. Dye) Did he have an explanation as to why he had to leave town? A. I don't think he did.

Q. Was any money given to Mr. Hampton at that time? A. Yes, there were.

Q. How much was given? A. I observed special Agent Sawyer take some money out of his pocket and take off some money

and pass it to Michael Byers. In return Michael Byers passed him a bill. The denomination of the bill I can't say.

Q. Then what happened after the exchange of the money took place? **[41]** A. We then was driven back to the—Special Agent Sawyer asked if we need a ride and I think I stated yes, it was awful cold outside, and then he drove us back to Kingshighway and Delmar where during the course of the ride Special Agent asked Michael Byers was there anyway he could get in touch with him, and Michael told him, no, no way at first, and then before we reached the destination, which was Kingshighway and Delmar, he then gave him a number that he could be reached at. He pulled up to the corner, myself and Michael Byers got out of the Special Agent's car.

Q. After the money transaction was completed, was there any other discussion about future narcotics sales? A. I don't understand the question.

Q. After the money changed hands, and after you were getting ready to leave, after having been driven back up to Delmar and Kingshighway, I believe you stated? A. Yes.

Q. Was there any other discussion about any other future narcotics purchases? A. I think Special Agent Terry stated that he would get in touch with him later.

Q. Was there any reference made to the strength of any future heroin that might be obtained? A. Not that I know of.

[42] Q. And directing your attention to the very next day, which would be February the 26, 1974, did you have occasion to see Mr. Hampton on that day? A. Yes, I did.

Q. Where did you see him on that day? A. It was late afternoon, Mr. Hampton came by my room, which I was living at 706 Kingshighway. He knocked on the door. I got up and opened the door, and he told me that "those guys" had called him. He didn't state their name. He just said, "those guys" had called him. I then—he then asked me, said, "Well,

come on, go with me." I said, "Man, I'm in bed." He said, "Well, come on, go with me to take care of this buy." So, I said, "Well, okay, wait till I get dressed."

So, I then put on some clothes and washed my face and brushed my teeth and we left together.

Q. About what time did you leave, if you know? A. I don't recall. I just know it was late in the afternoon.

Q. Could it have been early evening? A. Could have been.

Q. What happened after you left? A. We then walked down Kingshighway to Maryland, I think it is, where we waited on the corner for a few minutes, and I saw the agents' car, and I just waited to see if he was going **[43]** to see it, so he never did, so I just pointed to the agent's car and myself and him walked over to the car and Special Agent McDowell got out of the car, where I got into the rear seat—well, the Special Agent got in first, and I got into the rear seat on the passenger side, and Michael Byers got into the front seat.

Q. Who was in the front seat besides Mr. Byers? A. Special Agent Sawyer.

Q. What happened after you all entered the vehicle? A. After we got into the car Special Agent Sawyer asked him did he bring the package, and Michael stated, "Yes," and he also asked him how did he like that other, and I think Special Agent McDowell stated it was okay.

Q. Now, where did he obtain—did he give the agents anything on that date? A. Yes, he did.

Q. What was it he gave them? A. Tinfoil package.

Q. Where did he get that tinfoil package from? A. Which he took out of his cap.

Q. What kind of cap was it? A. It was a black cap.

Q. Can you describe it any more than that? A. Well, it was just a regular cap with a bill on it, **[44]** black.

Q. And so what happened after he obtained the material out of his cap? A. He passed it to Special Agent Sawyer and Special Agent Sawyer in turn passed it to Special Agent McDowell where I observed him take some out of the package on a paper clip and put it into a little glass tube.

Q. Was this putting it into the glass tube, is that the same procedure that had been gone through earlier? A. Yes, it were.

Q. On the proceeding day? As a result of that test did Agent McDowell make any comments? A. Sure. After about two or three minutes he stated to Agent Sawyer it was okay, and Agent Sawyer stated that had the money but it was in the trunk of his car.

Q. And then what hapened after Agent Sawyer made that statement? A. Agent Sawyer then got out of the car and walked to the rear of his car where he opened the trunk of the car, and the next thing that I knew Special Agent McDowell told—stated that he was Federal Narcotics Agents, to stay as you were, that we were both under arrest.

Q. Now, Jule, have you ever been addicted to narcotics of any kind? **[45]** A. Yes, I have.

Q. What was that? A. Heroin.

Q. Are you addicted at this present time? A. No, I'm not.

Mr. Dye: You may inquire.

Cross-Examination

By Mr. Lang

Q. Mr. Hutton? A. Yes.

Q. When did you first arrive in St. Louis? A. I can't give you an exact date, but I can——

Q. Remember the month? A. Yes.

Q. What month was it? A. March.

Q. March of '73? A. '74.

Q. You didn't arrive in St. Louis until March of '74? A. Yes.

Q. This is March of '74, Mr. Hutton, and the transaction was alleged took place with Chuck took place in February of 1974; how do you account for that? A. I could be mistaken. I said I couldn't give you an **[46]** exact date.

Q. You don't even recall the year, correct year that you arrived in St. Louis? A. This is '74.

Q. That is correct and the transactions you just testified to allegedly occurred February the 25th and 26th of 1974. So how do you explain the fact you weren't present in St. Louis at that time? A. I could be mistaken.

Q. You have no idea in fact when you arrived in St. Louis, is that right? A. No, I don't.

Q. Any reason why you don't know when you arrived in St. Louis? A. No, there isn't.

Q. Where did you stay when you first arrived in St. Louis, whenever it was? A. At the Westgate Hotel.

Q. Were you living there alone or were you living there with anyone else? A. I was living there with a lady.

Q. What was her name? A. Mary Weekly.

Q. Where did you meet Mary Weekly? **[47]** A. Kansas City, Missouri.

Q. Did you live there with her until the time that you left St. Louis? A. No, I didn't.

Q. Who left first, you or she? A. She did.

Q. Do you know when it was that she left St. Louis? A. No, I don't.

Q. You have no idea what month that would have been? A. She was arrested while she was here, so I don't know when she left.

Q. Do you know when she was arrested? A. It was in the month of March; the date I don't know.

Q. Of 1974? A. 1974.

Q. When did you first meet Chuck Hampton, who was known to you at that time as Michael Byers? A. I don't remember the date but I know I had been in St. Louis approximately three or four days.

Q. Where did you meet him? A. At The Pud Tavern.

Q. Where is The Pud located again? A. On Delmar and Kingshighway.

Q. Did you meet anyone else who was in the company of **[48]** Chuck at that time? A. Yes, I did.

Q. Would you name those individuals, if you know? A. I only know one.

Q. What was his name? A. First name Gus.

Q. Gus, you never knew what his last name was? A. No, I don't.

Q. What was the occasion that you all happened to be together in The Pud on this particular date when you first met? A. It wasn't a special occasion; it was just that I had—I had been going to a bar around the corner there and that bar had closed and I started going to the bar around there, and Gus stated that Chuck was from Chicago, and I told him, I said, well, I had lived there once myself, and I might know some people that he knew, and we started talking.

Q. When did you first have a conversation with Chuck about setting up a drug transaction? A. Chuck made the statement that he had to have some money.

Q. When did you first have the conversation, do you recall the date? A. No, I don't.

Q. Where did it take place? **[49]** A. It took place in The Pud Tavern.

Q. Who else was present at that time if anyone? A. During the conversation there was no one present but just him and I.

Q. Was it on a weekday or weekend, do you recall that? A. I think it was a weekday.

Q. Recall what time of the day it was? A. I can only guess. It was in the afternoon.

Q. What was the subtance of that conversation? A. Chuck, he stated he had to have some money, he had just got into town and he knew some people that he could get some heroin from.

Q. What did you say to that? A. I stated, well, I knew some people that would be interested in buying some.

Q. How many people had you met in St. Louis before you met Chuck would you say? A. Quite a few.

Q. Had you approached any of them about being involved in drug transactions? A. Yes, I had.

Q. Did you approach an individual named Michael Carter? A. I don't know a Michael Carter.

Q. You don't know anybody by the name of Michael Carter? **[50]** A. No.

Q. Did you approach Gus Logwood?

The Court: Gus who?

Q. (By Mr. Lang) Did you approach an individual named Gus, an individual referred to as Gus? A. About drugs?

Q. Right. A. No, I haven't.

Q. Did you approach an individual named Kenny? A. Yes, I did.

Q. What did you say to Kenny about setting up a drug transaction?

Mr. Dye: Your Honor, I will object. I don't see how this has any relevance to our case.

(Whereupon, discussion was had off the record at the bench, in the presence but out of the hearing of the jury.)

Q. (By Mr. Lang) Incidentally, did you use any other name or were you using any other name other than Jule Hutton at the time you were in St. Louis? A. Yes, I were.

Q. What name were you using? A. James Gray.

Q. James Gray. That's not your real name, is it? A. No, it's not.

[51] Q. Jule Hutton is your name? A. Yes, it is.

Q. You testified you had two prior convictions? A. That's correct.

Q. One was in Illinois? A. Yes, sir.

Q. What was the crime you were convicted of? A. Buglary.

Q. That was in 1966? A. Yes, sir.

Q. You were also convicted of forgery in Colorado, is that right? A. Yes, sir.

Q. That was in the Fall of '73? A. Yes, sir.

Q. Did you receive a sentence on that? A. I received a fine.

Q. A fine? A. A fine.

Q. A fine? A. Yes.

Q. You didn't receive any jail time? A. No.

Q. You weren't placed on probation? A. I was placed on supervision until the fine was paid. If I paid it all at one time, then the supervision would be **[52]** discontinued.

Q. Did you receive a sentence on your conviction for burglary in Illinois in 1967? A. Yes, I did.

Q. What was that sentence? A. One to three in the Illinois State Penitentiary.

Q. Did you serve the full time? A. No, I didn't.

Mr. Dye: Your Honor, I think we've been through all this.

The Court: I will sustain the objection.

Mr. Lang: I do have some more questions along this line.

The Court: Come up here.

(Whereupon, discussion was had off the record at the bench, in the presence but out of the hearing of the jury.)

Q. (By Mr. Lang) Were you also convicted in Kansas City, Missouri, in the Circuit Court of Jackson County, Mr. Hutton? A. Yes, I were.

Mr. Dye: Your Honor, we have to determine whether it's a proper conviction.

The Court: Objection is overruled. Go ahead, Mr. Lang.

Q. (By Mr. Lang) You didn't mention that when you were **[53]** being examined by Mr. Dye on direct examination, is that right? That is a conviction that you forgot about? A. He asked me when I was convicted, but it's over with; I received two-year probation.

Q. You do have a third conviction, is that right? A. Yes, sir.

Q. What was that for? A. Misconstruction of property—destruction of property.

The Court: Was it a misdemeanor?

The Witness: It was a misdemeanor.

Mr. Dye: Your Honor, I will object and ask the court to instruct the jury to disregard it.

The Court: I will instruct the jury to disregard it and that portion will be stricken from the record and the jury thoroughly instructed to disregard it, in regards to the witness at hand.

Q. (By Mr. Lang) Do you have any other felony convictions that you recall? A. No, I don't have any.

Q. When did you first become a special employee of the United States Government? A. July 1971. I'm sorry, 1961.

Q. Where were you working or what area of the country were you working in at that time? **[54]** A. I was working in Illinois.

Q. How long have you continued your employment as a special employee of the United States Government? A. From '61 to '65.

Q. And you terminated your employment at that time? A. Yes, I did.

Q. When did you resume it again? A. June of '72.

Q. During the period that you have been a special employee of the government, how many cases involving narcotics transactions have you been involved in? A. I can't give you an exact number; I can only estimate.

Q. Could it be somewhere in the neighborhood of 80 or 90 cases? A. More.

Q. Didn't you also work as a special agent at Omaha, or special employee for the government at Omaha? A. Yes, I did.

Q. And also Wichita, Kansas? A. Yes, I did.

Q. Didn't you testify in about 17 or 18 cases in Omaha, Nebraska? A. Yes, I did.

Q. And you are receiving compensation for your services **[55]** from the government? A. I'm paid at the rate of $25.00 per day, per diem.

Q. Doesn't matter whether or not you participate in the conviction of an individual, you're just on a standard salary, is that right? A. No, I'm not on a standard salary. I'm paid $25.00 per day, per diem.

Q. What do you mean by that? A. I mean if no cases are made I still make the $25.00 per day, per diem.

Q. If a case is made do you get anything in addition? A. I still makes the same thing.

Q. Now, during what period of time that you worked—let's take the first period of time, I think you said 1960 to '65? A. Yes.

Q. You were working for the government, you were using drugs, is that right? A. At the time.

Q. You were addicted to heroin? A. Yes, I were.

Q. What was the source of your supply of heroin at that time?

Mr. Dye: Your Honor, I'll object to that.

The Court: I'll sustain the objection. I think **[56]** that's far beyond the scope of this trial.

Mr. Dye: Totally irrelevant.

Q. (By Mr. Lang) When did you last use drugs? A. '72.

Q. 1972; you have not used any heroin during the period of time that you were in St. Louis, is that right? A. No, I have not.

Q. On February the 26th, the date that you testified that Chuck was involved in the second drug transaction with you, did you receive any money from Chuck on that day? A. No, I did not.

Q. Now, I think you testified that on February the 26th, the date of the second drug transaction, that Chuck came by your hotel room, is that right? A. Yes, he did.

Q. That was sometime either in the late afternoon or evening? A. Yes.

Q. And when did you leave your room? A. I can't give you an exact time.

Q. About how long after his arrival did you leave? A. Approximately 10 or 15 minutes because he kept telling me he was in a hurry.

Q. Is that the first time you had seen Chuck on that day? **[57]** A. Yes, it were.

Q. You had not seen him at all prior to the time he entered your hotel room late that afternoon, is that right? A. Not that I recall.

Q. When you left that room, you were going to make this sale of heroin to Agent Sawyer, is that right? That was the purpose of your leaving? A. The purpose of my leaving, I didn't want to go in the first place, he asked me, said, "Come on, go with me to make this deal," and I first stated, no, I didn't want to go, I was in bed. He told me, "I don't think I could recognize the people."

Q. Had you been in bed all day on the 26th? A. I had just went to bed. I had been up all night.

Q. Where had you been prior to going to bed? A. Gambling.

Q. Where were you gambling? A. On Washington and—oh, it's around 5700 block on Washington.

Q. Did you ever have a conversation at Chuck's apartment where Chuck was staying in regard to setting up one of these drug transactions? A. No.

Q. Had you ever been to Chuck's apartment? A. Yes, I had.

[58] Q. How many times had you been there? A. I don't know how many, numbers of times. I went there several times. Him and I smoked marijuana together.

Q. During the several visits that you had at his apartment, you never discussed setting up any drug transactions? A. No.

Q. You don't consider marijuana, I take it, a drug, is that right?

Mr. Dye: Well, your Honor, I object to this.

The Court: I will sustain the objection.

Q. (By Mr. Lang) But was it not your testimony that you have not used any drugs during the period of time you have been in St. Louis?

Mr. Dye: Well, your Honor, may we approach the bench, please?

(Whereupon, discussion was had off the record at the bench, in the presence but out of the hearing of the jury.)

Q. (By Mr. Lang) About how many times would you say you had discussions with Chuck setting up either or both of these drug transactions? A. Repeat the question.

Q. How many times would you say that you had conversations with Chuck setting up these drug transactions? A. Anyone in specifics?

[59] Q. Let's start with the first transaction. How many conversations did you have with him with regard to that? A. I think two.

Q. Where did the first concersation take place? A. Both of them took place in The Pud Tavern.

Q. Was anyone else present at that time, at either of these discussions? A. No, there was not.

Q. With respect to the second drug transaction, how many conversations did you have? A. We didn't have any.

Q. You didn't have any conversations? A. No, not at the second.

Q. Were you regularly making reports to Agent Sawyer or Agent McDowell about the progress of your work and effort in contacting suspects? Did you make any reports, written, oral or otherwise? A. No.

Q. You never told Agent Sawyer—is that your testimony, that you never told Agent Sawyer at any time that Chuck was interested in selling him heroin? A. I don't understand the question.

Q. Did you ever tell Agent Sawyer that Chuck was interested in selling heroin to Agent Sawyer? **[60]** A. Did I ever tell——

Q. Yes, did you ever tell that to Agent Sawyer? A. No more than at the time that I set up the deal with him.

Q. Which time are you referring to? A. The first transaction.

Q. Let's go back to the first drug transaction. How much heroin did you tell Agent Sawyer that Chuck was going to sell? A. I asked Chuck what did he have to sell.

Q. Oh, you asked Chuck how much he had. What did he tell you? A. He said a half a spoon, which was a boil.

Q. Did Chuck tell you where he was obtaining this heroin from that he was selling? A. No, he did not.

Q. Did you ever ask him where he was getting it from? A. No, I didn't.

Q. You weren't interested in finding out? A. Well,——

Mr. Dye: Your Honor, I can't see what relevancy this has.

The Court: Well, it isn't a very proper question, but I will let him go—go ahead if you have an answer.

[61] A. Well, it's normally not a procedure for a guy to ask at that given time. You usually pick your time and places when to ask for certain information, and you try and do it in a way

where you don't arouse suspicion between yourself and that individual.

Q. So you were never with Chuck when he got any of the heroin that he allegedly sold, is that right? A. No, I was not.

Q. What was the arrangement made with Chuck with respect to your part in the transaction, that is to say, were you supposed to be getting some type of pecuniary gain out of helping Chuck find a buyer? Were you supposed to be getting some money from Chuck for helping—to act as a broker more or less in supplying him with Terry Sawyer as a buyer? A. No, it was really strictly coincident that when we first met and he asked me—was telling me about he needed some money, he knew some places he could get some heroin that he could sell, but he didn't know a lot of people here, so I stated I know somebody that would be interested in buying some.

Q. But you never had any part in attempting to get any money; you were just doing it gratuitously as a favor? A. Yes, it were.

Q. I take it then that you never gave Chuck any money at all to help him get together with these funds in purchasing **[62]** this heroin? A. No, I have not.

Q. You have not given Chuck any money for any purpose, is that right? A. No.

Mr. Lang: I have no further questions.

The Court: Mr. Dye?

Mr. Dye: Just a few, your Honor.

Redirect Examination

By Mr. Dye

Q. Mr. Hutton, to the best of your knowledge do you know the dates of the offenses that Mr. Hampton is charged with today? A. Yes, I do.

Q. What are those dates? A. February 25th and 26th.

Q. When did you arrive in St. Louis? A. Well, I had been in St. Louis approximately three or four days before the incident, so——

Q. Where did you first meet the defendant? A. I met him in The Pud Tavern on Delmar and Kingshighway.

Q. There was someone else at the tavern by the name of Gus, I believe you said? A. Yes, there were.

[63] Q. How long have you been—I believe a special employee, the term has been used, but I think you actually are called a confidential informant, is that correct? A. That's correct.

Q. How long have you been in that capacity? A. Oh, approximately ten, eleven years.

Q. What agency are you working with at this time? A. DEA.

Q. What is that? A. Drug Administration.

Q. Drug Enforcement Administration? A. Drug Enforcement Administration.

Q. I believe you stated you received compensation for your services, is that correct? A. Yes, sir.

Q. I believe you also stated it is irrelevant whether you make a purchase or do not make a purchase? A. That's correct.

Mr. Dye: No further questions, your Honor.

The Court: Mr. Lang?

Mr. Lang: I have one question.

Recross-Examination

By Mr. Lang

Q. But this is your job, is that right, to supply **[64]** information as to suspected drug sellers? A. Repeat that.

Q. Your job is to supply information to the government on suspected drug sellers, is that right? A. That's correct.

Q. And like anyone else, you're interested in seeing that you do a good job? A. That is correct.

Mr. Lang: Right. Thank you.

Redirect Examination

By Mr. Dye

Q. Does your interest in doing a job, does that encompass framing people? A. No, sir.

Mr. Dye: That's all.

The Court: You may step down.

(Witness excused.)

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[65] TERRY C. SAWYER,

being produced, sworn and examined in behalf of plaintiff, testified as follows:

Direct Examination

By Mr. Dye

Q. State your name, please. A. Terry C. Sawyer.

Q. What is your occupation, Mr. Sawyer? A. I'm a Special Agent with Drug Enforcement Administration.

Q. How long have you been so employed? A. Between three and a half and four years.

Q. Are you familiar with an individual by the name of Charles Hampton? **[66]** A. Yes, sir.

Q. Are you familiar with him under any other name? A. Yes.

Q. What is that name? A. Michael Byers, Michael Chenoworth——

Q. That's all we need.

Are you familiar with an individual by the name of Jule Hutton? A. Yes.

Q. Are you familiar with an individual by the name of James Gray? A. Yes.

Q. Is Jule Hutton and James Gray the same individual? A. That's correct.

Q. Were you so acquainted with these individuals on February the 25th, 1974? A. Yes, sir.

Q. Did you happen to receive a telephone call from any individuals on that day? A. Yes, sir, I did.

Q. Who was that individual? A. Jule Hutton.

Q. What was the substance of that conversation? A. He advised me that he had arranged for me to purchase **[67]** a quantity of heroin.

Q. Did he say who the individual was? A. Yes, he did.

Q. Who was that individual? A. Charles Hampton.

Q. What happened as a result of your telephone conversation?

Let me ask you, what did you tell him? A. At that time?

Q. Yes, at that time. A. He gave me a phone number where I could call him back, and I told him I would have to arrange to get some money.

Q. What did you do after you talked to Mr. Hutton? A. I talked with another agent about some money and got some government money and called Jule Hutton back.

Q. Who was that other government agent? A. James McDowell.

Q. Approximately what time did you call Mr. Hutton back? A. Must have been around 9:30 that time. I told him I would telephone him again when we got down in that area.

Q. What if anything did you do after making this telephone call to Mr. Hutton? A. Myself and Agent McDowell proceeded to the area of Lindell and Kingshighway, where I placed another telephone call **[68]** to Jule Hutton.

Q. Where was he at this time, if you know? A. He was at The Pud Tavern.

Q. What was the substance of your conversation? A. I told him that we would—Agent McDowell and myself would wait for him and the defendant at the corner of Kingshighway and Lindell.

Q. Was anyone else near the telephone at the time of these conversations? A. Oh, Agent McDowell may have been; I don't recall. We made the call from a small cafe down there.

Q. On any one of these telephone conversations did Mr. Hutton have occasion to talk to anyone while he was talking to you? A. Yes.

Q. Who was that individual? A. Well, he told me it was Defendant Hampton.

Q. What was the conversation that you had with him at that time? A. I asked Jule Hutton how much the boil of heroin was going to cost and he said, "Just a moment, the man's right

here, I'll ask him," and then he got back on the phone and told me that it would be $155.00.

Q. And at that time you made arrangements to meet Mr. **[69]** Hutton and the defendant? A. Well, that was the second call, and later that night about 10:45, when we actually got down into the area is when I made arrangements to meet with them.

Q. So after your third telephone call that you were a party to, what happened after that? A. Myself and Agent McDowell waited in the area of Kingshighway and Lindell for quite sometime. In fact, we drove up and down Kingshighway five times to see if we could see the people that we were supposed to meet, but we didn't, so we finally parked down there at Lindell and Kingshighway, and at approximately 11:15 we observed Jule Hutton and Charles Hampton arrive in that area.

Q. And what happened after they—did Mr. Hutton at any time come to your vehicle and talk to you? A. Yes, he subsequently came to the vehicle and—along with Jule Hutton. They both entered the government vehicle. Jule Hutton entered the rear seat with Agent McDowell, and Mr. Hampton got in the front seat with me.

Q. Before both the informant and the defendant arrived at your vehicle, did you have occasion to see Mr. Hutton after you yourself had arrived at that locale? A. Yes.

Q. What if anything was said at that time? **[70]** A. Well, we saw both—I saw both Jule Hutton and the defendant, and the defendant walked into the Chase Plaza Hotel, I believe.

Q. Chase-Park Plaza? A. Chase-Park Plaza, and I called Jule over to the car and he said he just went in, he would go get him; so he went into the hotel.

Q. So what happened after Mr. Hutton said the defendant arrived at your vehicle? A. Mr. Hampton explained to me that

the heroin was seven cut and—or it was seven, I guess you would say.

Q. What does he mean by "seven cut"? A. Well, I interpreted it to mean that it had been cut seven times; it had been diluted seven times. However, he may have meant that it was good enough to be diluted seven times. I thought that he was saying it's already been diluted seven times.

Q. Then what happened after he said that? A. I asked him for the heroin. He removed his hat and took it out of his hat band and handed to me a tinfoil packet.

Q. Directing your attention to Government's Exhibit 1-C, I would ask you to identify that, please? A. Yes, that is No. 1.

Q. Would you describe what that is, please? **[71]** A. This is the tinfoil packet that the defendant handed me on the night we are talking about.

Q. Now, there appear to be some sort of initials on that, is that correct? A. Yes.

Q. What are those initials? A. Those are my initials and Agent McDowell's initials. It's dated February 25, 1974, Exhibit 1, Case No. L-274X018.

Q. Is what is contained in Government's Exhibit 1-C the same items you received from Hampton on that date? A. Yes.

Q. And what happened then after Mr. Hampton obtained the Government's Exhibit 1-C from his hat? A. He handed it to me.

Q. What did you do with it after he gave it to you? A. I opened the package and examined the contents and held it up so that Agent McDowell, who was in the back seat, could remove a small quantity of substance and field tested it with positive results for heroin.

Mr. Lang: Your Honor, may I approach the bench? I object to the last testimony of the witness.

(Whereupon, the following proceedings were had at the bench, in the presence but out of the hearing of the jury:)

Mr. Lang: I'm asking that the portion of the witness' **[72]** testimony that the substance tested for heroin be stricken from the record and the jury be instructed to disregard it as hearsay testimony. This witness has not established his qualifications as an expert on the testing of heroin.

Mr. Dye: I'll join in that.

The Court: All right, do you want to start over again?

Mr. Dye: We can establish it with Agent McDowell; makes no difference.

The Court: Miss Poole, would you read me that question and answer.

(Whereupon, the reporter read the last question and answer.)

The Court: I'll sustain the objection and order the portion stricken, and I'll do this in front of the jury, following what Agent McDowell did with it, because I don't think it's responsive.

(Whereupon, the following proceedings were had in the presence and hearing of the jury:)

The Court: I will sustain the objection, so the jury understands, and ask that the portion of the answer explaining what Agent McDowell did after Agent Sawyer handed the packet to him, that that portion will be stricken and you are instructed to disregard it.

Now, proceed.

[73] Q. Did Agent McDowell make any comment after examining the substance? Just yes or no. Was there a comment or was there not? A. Yes, there was.

Q. As a result of that conversation what, if anything, did you do? A. I then talked with the defendant relative to the

price. I asked him if I could get a break on the price, and we negotiated and arrived at $145.00.

Q. What happened after you agreed to that price? A. I counted out $150.00 in official government funds and handed it to the defendant. He gave me $5.00 change.

Q. And what, if anything, else was said during your meeting with Mr. Hampton at that time? A. He advised me that he could obtain spoon quantities of heroin which would be better quality than that that I had just purchased. I asked him where I could reach him, you know, if he had a phone number I could reach him at, and he gave me a phone number. We then drove the defendant and the informant back to the corner of Kingshighway and—it's not Lindell——

Q. I believe—is it Delmar? A. Delmar.

Q. What happened after you arrived at that location? A. The defendant and Jule Hutton exited the government **[74]** vehicle and Agent McDowell and myself left the area.

Q. Now, after you left the area, where, if anywhere, did you go? A. As I recall, we went home.

Q. Did you maintain what has been marked as Government's Exhibit 1-C in your possession? A. Yes, sir, I identified it that night as Exhibit 1 of that case, initialed it and put it under temporary seal, kept it in my possession until the following day, when I removed it from the lock[illegible]al evidence envelope, weighed it, resealed it and mailed it to the DEA chemist in Chicago via registered mail.

Q. Showing you what has been marked as Government's Exhibit No. 1-A, I would ask you to identify that, please. A. This is the evidence envelope that I originally sent to the laboratory, sent the evidence in to the laboratory.

Q. How was that mailed? A. Registered mail.

Q. Now, directing your attention to the next day, February

the 26th, did you have occasion to talk to the defendant? A. Yes, I did.

Q. What, if anything, did you do as a result of that conversation? A. I met with him on the corner of Maryland and Kings- **[75]** highway that afternoon about 5:15, I believe.

Q. Was anyone with him when you met him? A. Yes, Jule Hutton was with him.

Q. Who was with you at that time? A. Agent McDowell.

Q. What, if anything, did they—you were parked? A. Yes, sir.

Q. In the vicinity, is that correct? A. That's correct.

Q. What, if anything, happened after they saw you? A. They came over and got into the government vehicle the same way they did the night before. Jule Hutton got in the rear seat with Agent McDowell and the defendant got into the front seat with me.

Q. What, if anything, transpired while you were in the vehicle? A. I asked the defendant if he had the heroin and he said he did, and removed his hat, took out a package of—tinfoil package again, handed it to me. I opened it and held it over the seat for Agent McDowell to withdraw a small quantity of substance.

Q. I show you what has been marked as Government's Exhibit No. 2-C and ask you to identify that, please. A. That is the heroin that I purchased from the defend- **[76]** ant on the 26th of February.

Q. What happened? What else happened after he had given you the heroin in the vehicle? A. I told him that I thought it was light weight, that it didn't weigh enough, and he explained that it was a full spoon. At that time I asked him how much it would cost. He said, $500. I told him that the money was

in the trunk, which I got out of the government vehicle, walked around to the trunk and opened it.

Q. Now, directing your attention to the inside of the automobile, did Mr. Hampton have any explanation as to your criticism of the weight? A. As I recall, he stated that it was a full spoon and was of high quality.

Q. So then what happened after you got out of the vehicle? A. I opened the trunk of the vehicle, whch was a pre-arranged signal to surveillance officers in the area that the arrest would occur, at which time I walked up to the passenger side of the vehicle where Mr. Hampton was seated and knocked on the window; he opened the door and I placed him under arrest.

Q. And what if anything did you do after you effected the arrest? A. We searched him for drugs and——

Q. We won't go into that. **[77]** A. ——weapons.

Q. After you arrested him did you have occasion to do anything with what has been marked Government's Exhibit 2-C? A. Yes, I placed that under temporary seal and placed it in the office vault overnight until the following day when I removed it, weighed it, resealed it and mailed it to the DEA chemist in Chicago via registered mail, return receipt requested.

Q. Directing your attention to Government's Exhibit 2-A, I would ask you to identify that, please. A. That is the envelope that I sealed it in originally and sent it to the lab.

Q. And I believe you stated that Government's Exhibit 1-C had some initials on it, is that correct? A. Yes.

Q. All right, now, I show you what has been marked Government's Exhibit 2-C and ask you if any such initials appear on that also? A. They are the same.

Q. Now, directing your attention to the 25th of February, did Mr. Hampton make any references to any future purchases of narcotics which he might be able to arrange? A. Well, I

believe I have already testified that he told me he would be able to obtain spoon quantities of heroin which would be of higher quality than the heroin I had just [78] purchased.

Q. What arrangements did you make to get in touch with him? A. I asked him for a telephone number.

Q. Did he in fact give you a telephone number? A. Yes, he did.

Q. Did you ask him who you should try to get in contact with? A. He said to ask for Chuck.

Q. And did he make any references to how quickly he could secure another amount of heroin? A. He told me it would be the following day.

Q. Did he say that he would have to check on it or anything to that effect? A. Said he would have to see—talk to his man about——

Mr. Dye: Okay.

Your Honor, at this time the Government moves to introduce Exhibits 1-A, 1-B, 1-C and 2-A, 2-B and 2-C into evidence.

The Court: Have you had a chance, first, to look over these?

Mr. Lang: I haven't as yet.

The Court: Would you.

Mr. Lang: No objections, your Honor.

[79] The Court: Exhibits 1-A, 1-B, 1-C, 2-A, 2-B and 2-C will be admitted into evidence.

(Plaintiff's Exhibits 1-A, 1-B, 1-C, 2-A, 2-B and 2-C were received in evidence.)

Mr. Dye: Your questions.

Cross-Examination

By Mr. Lang

Q. Officer Sawyer, when did you first meet the individual known as James Gray? A. Well, I probably met him in Kansas City a long time ago but I do not recall that. The first time I recall meeting him was approximately three weeks before the incident that we are discussing.

Q. What were the circumstances of that meeting? A. I picked him up at the bus station here in St. Louis.

Q. And at that time he was coming to work here as a confidential informant? A. That is correct.

Q. Now, you have been with the Drug Enforcement Administration for approximately three and a half to four years, is that right? A. That's correct.

Q. Often the Drug Enforcement Administration has to employ informers who are drug addicts to assist in apprehending [80] suspected sellers, isn't that right?

Mr. Dye: Your Honor, I think we have established that Mr. Hutton is no longer an addict, and I think that is——

The Court: I'll let him answer if it's the general policy, if he's familiar with it.

Do you understand the question?

Q. (By Mr. Lang) The question is often the DEA employs drug addicts to act as informant or on occasions, at least? A. Well, we try not to but it has been done.

Q. This may be done, these persons may be employed to apprehend sellers of heroin, is that right? A. They don't apprehend them.

Q. Well, to assist in apprehending them? A. That's correct.

Q. And sometimes is it necessary that the informant himself may make a purchase of drugs as opposed to an agent? A. It has been done.

Q. And, as a matter of policy of the DEA are there any special precautions taken in circumstances where the informer is going to make a purchase of drugs as opposed to——

Mr. Dye: Your Honor, I'll object to that.

The Court: I'll sustain that objection, unless you have evidence in this case that that was done.

Mr. Lang: Well, Your Honor, I will——

[81] (Whereupon, discussion was had off the record, at the bench, in the presence but out of the hearing of the jury.)

Q. (By Mr. Lang) Do you have any knowledge one way or the other as to whether or not James Gray was using drugs while he was here in St. Louis? A. No, sir, I do not.

Q. How many conversations, if any, did you have with James Gray regarding the first transaction that he was setting up with Chuck? A. I had three.

Q. When was the first one? A. It was about 8:30 at night on the 25th.

Q. What about the transaction that took place on the 26th, how many discussions did you have with James Gray regarding that, prior to the time? A. None.

Q. Was there an earlier sale of drugs that you are aware of by Chuck, or a substance by Chuck to another undercover agent named Frankie, who was going by the name of Frankie? A. Yes.

Q. When did that sale take place? A. I believe it was a week or so prior to this.

Q. Where did the sale take place? A. I don't recall the name of the place. I'm relatively **[82]** new in St. Louis——

Mr. Dye: May we approach the bench, your Honor.

The Court: Yes, I think you should. Miss Poole, would you come up?

(Whereupon, the following proceedings were had in the presence but out of the hearing of the jury:)

Mr. Dye: Your Honor, I object to this because it is beyond the scope of the examination and it is irrelevant.

The Court: This may be prejudicial to the defendant.

Mr. Lang: I understand. Our defense all along in this case has been the misrepresentations made by the informant to the defendant as to the nature of the substance he was selling, and I believe—as to the nature of the substances he was selling, this was an earlier sale which had been induced by the informant in this case, and there's evidence, I believe, to show that that substance did not test positively for heroin and so this later induced the defendant to believe that the other substances which were sold by him on these prior occasions were not heroin as well.

The Court: This involved this same Mr. Hutton?

Mr. Lang: Yes, it did.

The Court: With this defendant?

Mr. Lang: That's correct.

Mr. Dye: Your Honor, I will object. I think we **[83]** haven't laid a sufficient foundation in the first place for Mr. Sawyer's personal knowledge of this. He's not qualified to testify as to any chemical test. It's clearly beyond the scope of the direct examination and I think it's irrelevant.

The Court: Well, Sawyer said he was familiar with it. Now if he has no personal—Mr. Sawyer has indicated that he knew

of this thing, Mr. Long has not established that he had personal knowledge, and Mr. Lang had better follow through in that regard, but I will permit you, Mr. Lang, to go into this inquiry. I admonish you to be careful so nothing prejudicial to the defendant arises, and, secondly, to go slowly so that if there's anything that looks like you're getting into a dangerous area Mr. Dye can object and I can rule accordingly.

(Whereupon, the following proceedings were had in the presence and hearing of the jury:)

Q. (By Mr. Lang) Do you have any personal knowledge of an alleged sale made by the defendant to an officer, undercover agent named Frankie, or going by the name of Frankie, a sale of a controlled substance? A. No, sir.

Q. Do you have knowledge, direct knowledge, personal knowledge, of any sale of any substance by the defendant to an undercover agent going by the name of Frankie?

Mr. Dye: Your Honor, he just asked the question.

[84] The Court: He changed it.

Is Frankie the person that you want this officer to identify as the purported undercover agent?

Mr. Lang: Yes.

The Court: Did you understand that, Officer Sawyer? He didn't say narcotic, he said of any substance. Do you have personal knowledge?

The Witness: I don't have personal knowledge.

Q. (By Mr. Lang) You do know an undercover agent who goes by the name of Frankie? A. I know an undercover agent who has used the name Frankie in an undercover situation.

Q. Is this individual black or white? A. Black.

Q. Was this individual present in the police station or wherever the defendant was taken when he was arrested? A. Yes.

The Court: That is the first day we are talking about?

Mr. Lang: He was arrested after the second transaction.

The Court: After the second, on February 26th.

Q. (By Mr. Lang) He was present in the police station? A. It wasn't the police station; it was our office.

Q. What is this undercover—can you reveal the name of this undercover agent, real name?

[85] Mr. Dye: May we approach the bench, your Honor.

(Whereupon, discussion was had off the record at the bench, in the presence but out of the hearing of the jury.)

Q. (By Mr. Lang) The officer going by the name of Frankie, did you hear him make any statements in regard to the purchase of heroin at the police station that he had supposedly made from the defendant?

Mr. Dye: Your Honor, I will object to that on the grounds of hearsay.

The Court: I will sustain the objection.

Q. (By Mr. Lang) Did you hear the undercover agent who was going by the name of Frankie make a statement to the effect——

Mr. Dye: Same objection, your Honor.

The Court: Sustained.

Mr. Lang: May I approach the bench?

(Whereupon, discussion was had off the record at the bench, in the presence but out of the hearing of the jury.)

The Court: Go ahead. I'll let you answer, Officer, if you heard a statement made, you know, yes or no. By Frankie?

Q. (By Mr. Lang) By Frankie. A. Yes.

Q. May I inquire as to what statement?

Mr. Dye: Well, your Honor, that's hearsay.

The Court: I'll sustain it.

[86] Q. (By Mr. Lang) Do you have personal knowledge of where Chuck obtained the substances that he sold to you? A. No, I don't.

Q. Do you have personal knowledge that Chuck knew these substances were heroin? A. He purported them to be heroin.

Q. But you don't in fact know what was in his mind, is that right? A. No.

Mr. Lang: May I approach the bench, your Honor?

The Court: Yes.

(Whereupon, discussion was had off the record at the bench, in the presence but out of the hearing of the jury, and thereafter the following proceedings were had at the bench, in the presence but out of the hearing of the jury:)

The Court: We'll go on the record here. Mr. Lang, you have moved for—go ahead.

Mr. Lang: I move for the production by the prosecution of any written reports or written memorandum that were made by Officer Sawyer's investigation of this case or that he participated jointly in making.

Mr. Dye: May the record reflect the government has submitted the BND Form 6 to the defendant, which encompasses the agent's testimony and all his written notes.

[87] Mr. Lang: I would like to have a short opportunity at counsel table to review it.

(Whereupon, the following proceedings were had in the presence and hearing of the jury:)

Q. (By Mr. Lang) Your testimony is that you only had three conversations with James Gray on the 25th of February? A. That's the way—all I recall.

Q. And prior to that you had not at all discussed any drug transactions involving Chuck Hampton with James Gray? A. Not that I recall.

Mr. Lang: That's all I have, your Honor.

The Court: Thank you, Mr. Lang.

Mr. Dye?

Mr. Dye: May we approach the bench?

(Whereupon, the following proceedings were had at the bench, in the presence but out of the hearing of the jury:)

Mr. Dye: Your Honor, I'm ready to let this witness be excused. As you know, this is the individual who prepared the tape recordings, but I will be content to let the tapes go in on rebuttal unless defense has an objection to that.

Mr. Lang: I don't have any objection at this point.

Mr. Dye: So we will go through qualification of the witness as to the various elements of the admissibility of the tapes.

[88] Mr. Lang: We will stipulate to that.

The Court: He may be excused then?

Mr. Dye: That's correct, your Honor.

(Witness excused.)

The Court: Call your next witness.

Mr. Dye: James McDowell.

JAMES D. McDOWELL,
being produced, sworn and examined in behalf of plaintiff, testified as follows:

Direct Examination

By Mr. Dye

Q. Could you state your name, please? A. James D. McDowell.

Q. What is your occupation? A. I'm employed as a special agent for the Drug Enforcement Administration.

Q. How long have you been so employed? A. Almost five years.

Q. Have you had occasion to be involved in a case captioned United States versus Charles Hampton, also known as Michael Byers? A. Yes, sir, I have.

Q. Were you involved in this case on the date of Feb- **[89]** ruary 26, 1974? A. Yes, sir, I was.

Q. At approximately what time were you involved in this case? A. Shortly after 10:00 p.m. on that date.

Q. How exactly did you become involved? Did someone give you a phone call or what? A. Yes, sir, Special Agent Sawyer telephoned me at my residence.

Q. What if anything did you do as a result of that conversation? A. I met with Special Agent Sawyer and we then proceeded to the intersection of Lindell and Kingshighway here in the City of St. Louis.

Q. Lindell? A. Yes, Lindell.

Q. What happened? Approximately when did you arrive there? A. Oh, approximately 10:45 p.m.

Q. What happened after you arrived there? A. After we arrived, Special Agent Sawyer made telephone calls, as I recall, and later that same day we met with two other individuals.

Q. Was one of those individuals the defendant? **[90]** A. Yes, sir, it was.

Q. Would you identify him, please? A. He's the man seated at the table behind you, in the red or purple shirt.

Mr. Dye: May the record reflect identification, your Honor?

The Court: Yes.

Q. (By Mr. Dye) Now, was anyone with him, anyone else with him at that time? A. Yes, sir.

Q. Who was that? A. Special employee of the Drug Enforcement Administration.

Q. Who was that individual? A. Jule Hutton.

Q. Does he have any other name? A. Yes, sir; that he's known by?

Q. Yes. A. Yes, sir.

Q. What is that name? A. I believe it's James Gray.

Q. Approximately when did you meet Mr. Hutton on that day? A. Shortly after we arrived, within 15 minutes or so.

Q. Where did you meet? **[91]** A. Met at the—across—directly across from the Chase-Park Plaza Hotel on Kingshighway.

Q. What, if anything, did you do after you met with these individuals? A. Well, Mr. Hampton and Mr. Hutton entered our vehicle, government vehicle, and I seated myself in the back seat behind the driver. Mr. Hutton got in beside me in the rear seat and Mr. Hampton was seated in the passenger side of the front seat.

Q. Was there any conversation after entering the vehicle? A. Yes, sir, there was.

Q. Who made the conversation? A. The conversation was chiefly between Special Agent Sawyer and Mr. Hampton.

Q. What, if anything, was said at that time? A. Oh, Mr. Sawyer asked Mr. Hampton did he have the stuff with him and Mr. Hampton stated that he did.

Q. Then what happend after that conversation? A. Mr. Hampton withdrew an aluminum foil packet from the hat that he was wearing at the time and handed it to Special Agent Sawyer in the front seat.

Q. What happened after Agent Sawyer got hold of that packet? A. Agent Sawyer examined the packet and I took a sample of the packet and tested it, made a field test on it.

[92] Mr. Lang: May we approach the bench?

Mr. Dye: Well, you know, he can state what he did, your Honor, if he performed a field test. He's not making a conclusion.

Showing you what has been marked as Government's Exhibit 1-C, I would ask you to identify that, please. A. This is the packet which I made a field test on on the night of the 25th of February, '74.

Q. How do you know that is the same packet? A. My initials are on the label in closing the packet.

Q. As a result of your field test which you performed, what, if anything, did you say? A. I indicated to Special Agent Sawyer that the substance appeared to be of satisfactory quality. I might say that the field test was for heroin, and I indicated to Special Agent——

Mr. Lang: I didn't hear the answer.

The Court: Let Miss Poole read it so we will have it.

(Whereupon, the reporter read the answer.)

Mr. Lang: May I approach the bench?

(Whereupon, discussion off the record was had at the bench, in the presence but out of the hearing of the jury.)

Q. (By Mr. Dye) I believe you made reference to a field **[93]** test that you performed? A. Yes, sir.

The Court: Excuse me. I will sustain the objection of the defendant to the last question and answer, and the portion giving any result of the field test will be stricken from the record and the jury instructed to disregard it.

Q. (By Mr. Dye) Now, I believe you stated you performed a field test, is that correct? A. Yes, sir, that is correct.

Q. Have you performed these field tests in the past? A. Yes, sir.

Q. Approximately how many times did you perform them? A. Just giving a rough estimate, I would say approximately 50 or 60.

Q. Fifty or 60. Have you had any special training in that area in how to perform field tests? A. Yes, sir.

Q. Did you receive training from the Bureau of Narcotics and Dangerous Drugs to that effect? A. Yes, sir, that's correct.

Q. You did have occasion to examine this heroin or what has been marked Government's Exhibit 1-C, is that correct? A. Yes, sir.

Q. Could you briefly describe the test you performed on **[94]** it? A. I took a portion of the substance which was contained in the aluminum foil and immersed it in a glass vial containing a chemical reagent.

Q. What, if anything, developed in the vial? A. The liquid in the vial changed color.

Q. To what color did it change? A. To a reddish purple.

Q. Based upon your examination of that substance and also your training as a special agent by the Drug Enforcement——

Mr. Lang: I think the question is calling for hearsay.

The Court: Well, first, complete the question and let me see if it's going to call for hearsay.

Q. (By Mr. Dye) Based upon your examination of Government's Exhibit No. 1-C, and based upon your training as a narcotics officer by the Drug Enforcement Administration, have you arrived at a conclusion as to the substance which can be found in Government's Exhibit 1-C?

The Court: Excuse me, don't answer yet, Agent.

(Whereupon, discussion was had off the record, at the bench, in the presence but out of the hearing of the jury.)

The Court: I will sustain the objection as to that question until you have a more complete foundation.

[95] Q. (By Mr. Dye) Now, you completed the field test, is that correct? A. That's correct.

Q. What was the color of the field test? A. Reddish purple.

Q. Based upon your experience and examination of the substance, what does a reddish purple color indicate?

The Court: Go ahead, make your objection.

Mr. Lang: I object to the form of the question as calling for hearsay.

Mr. Dye: I can't see how it's hearsay.

Mr. Lang: Could we approach the bench?

(Whereupon, the following proceedings were had at the bench, in the presence but out of the hearing of the jury:)

Mr. Lang: It's hearsay, the question whether the substance was in fact heroin. If he's going to express an opinion about it being heroin, he has to show qualifications as an expert. No qualifications have been put into evidence about this witness' knowledge of what—he's not an expert on the question of what these tests demonstrate. All he knows he gives a test and it produces certain results. No proper foundation has been laid, No. 1. No. 2, it would be hearsay; if he does give an opinion as to what the substance is, it would be hearsay, if he says it is heroin.

[96] The Court: He's already shown that he has experience in using this machine, and in training of the use—I say machine, of this particular test.

What do you assume or understand his answer will be, Mr. Dye?

Mr. Dye: That it indicates it to be a derivative.

The Court: I'll overrule the objection at this time.

(Whereupon, the following proceedings were had in the presence and hearing of the jury:)

Q. (By Mr. Dye) Based upon your examination of 1-C and your formal training, have you arrived at a conclusion as to the substance in Government's Exhibit 1-C pursuant to the field test? A. Well, generally the field test is used only as a preliminary indicator. My definite conclusion is usually not drawn from the field test, so I, at that point, I couldn't say that it was definitely one thing or another, only giving the general indication as the field test is designed to do.

Q. What was that general indication? A. That the substance contained heroin.

Q. What did you say after conducting this test? A. I told Agent Sawyer that the substance appeared to be of satisfactory quality.

Q. And what, if anything, did Agent Sawyer do after that? **[97]** A. Agent Sawyer then discussed with Mr. Hampton any further transactions, the price of the—of any further transactions. He also discussed the price of the current—that is, this packet, the price of this packet, discussed the quality of this packet with Mr. Hampton.

Q. Did Mr. Hampton make any representations as to the quality of the heroin? A. Yes, sir, he did.

Q. What did he say? A. Stated that the heroin contained in this packet was a seven, but that it would take a nine, which indicates based on my experience that it was cut seven times but would stand a cut to nine times.

Q. Did he make any representations—did you inquire as to what if anything was the substance of the Government's Exhibit No. 1-C at that time? A. I'm not sure I follow your question, sir.

Q. Did you discuss with him the contents of Government's Exhibit 1-C? A. As far as its quality or its actual——

Q. As far as its quality, that's correct. A. Yes, sir.

Q. What if anything did you say? A. Other than the fact that it was cut seven times and **[98]** would stand a cut to nine times, is that——

Q. Well, was there any representations made as to what elements, what chemicals were in Government's Exhibit No. 1-C? A. Specifically?

Q. Yes, specifically. A. Not that I recall.

Q. Now, as a result of your examination of Government's Exhibit 1-C, what, if anything else happened at that time? A. Special Agent Sawyer paid Mr. Hampton for the exhibit.

Q. What happened then? A. Special Agent Sawyer asked Mr. Hampton if he could obtain additional quantities of it, specifically mentioning a spoon quantity of the substance. Mr.

Hampton indicated to Special Agent Sawyer that he would be able to obtain spoon quantities but was unable to discuss a price for the spoon quantities at that time, stating that he would have to contact his source to obtain a definite price for the additional quantity.

Q. Then after the conversation in the vehicle terminated, what if anything happened? A. Special Agent Sawyer was to contact him. Special Agent Sawyer asked Mr. Hampton who he should ask for when he called. Mr. Hampton stated that he should ask for Chuck.

Q. Now, directing your attention to the next day, which would be February the 26th, 1974, did you have occasion to work **[99]** on this case? A. Yes, I did.

Q. When did you become involved in this case on that day? A. About 4:00 p.m. Special Agent Sawyer informed me that we would again be meeting with Mr. Hampton in approximately an hour at the intersection of Kingshighway and Maryland Avenue, I believe, in St. Louis.

Q. What did you do as a result of that conversation? A. We went to that location, that is, Maryland Avenue and Kingshighway, and met with Mr. Hampton and Mr. Hutton again.

Q. What happened after you met with them? A. Mr.—I got out of the vehicle, got in the back seat, assuming the same position in the vehicle that I had the previous night. Mr. Hutton also got in the back seat with me. Mr. Hampton again got in the front passenger side.

Q. After they entered the vehicle, did you have any discussions? A. Yes, sir.

Q. What was the gist of the discussions in your best recollection? A. Special Agent Sawyer again asked Mr. Hampton if he had brought the substance with him. Mr. Hampton again removed his hat, although it was a different hat than the day

before, and handed Special Agent Sawyer a similar package to that which **[100]** he had received the previous night.

There was discussion as far as its quality, and the price involved.

Q. Did you have occasion to examine what has been marked as Government's Exhibit 2-C at that time? A. Yes, sir.

Q. Did you conduct a test on that substance? A. Yes, sir, I did.

Q. Was that the same test you discussed previously in your testimony? A. That's correct.

Q. And based on the examination of the substance in your experience as a Special Agent of the Drug Enforcement Administration, did you arrive at a conclusion, a tentative conclusion as to the substance contained in Government's Exhibit 2-C? A. Yes, sir, I did.

Q. What was that conclusion? A. The tentative conclusion which I reached was that the substance contained some quantity of heroin.

Q. Did you make any inquiry of Mr. Hampton as to what if any chemicals were in Government's Exhibit No. 2-C? A. Yes, sir, I did.

Q. What did you ask? A. I asked Mr. Hampton what the heroin had been cut with **[101]** and he stated that he had added lactose and Dormin.

Q. Did he make any reference to any other chemical? A. Not that I recall.

Q. Was there anything unusual about the heroin when you opened the package? A. Not that I recall.

Q. Was there any reference made to quinine in the course of your discussions? A. There may have been but I don't recall specifically at this time.

Q. After you conducted your test, what did you then do? A. I indicated to Agent Sawyer that again the substance appeared to be of satisfactory quality, meaning to him that the field test had been positive.

Q. We have heard a lot of discussion about what "spoon" means, could you describe what the term "spoon" signifies? A. Well, it can signify several things. It can either be a teaspoon or tablespoon full of heroin, or any other substance for that matter.

Q. Do you know what a "boil" is? A. That is a new term to my street vocabulary. It indicates, as far as I can tell, a quantity of substance somewhat less than a spoon.

Q. After you conducted your test and after you had given **[102]** the substance back to—I believe you stated it was Agent Sawyer, is that correct? A. That's correct, I never actually took the substance from him. I only removed a portion of the substance from the package itself.

Q. And after you conducted your test what if anything happened after you conveyed the information result of the test, what happened to Sawyer then? A. Special Agent Sawyer discussed price with Mr. Hampton and he indicated, as I recall, the purchase price was $500. Special Agent Sawyer then stated, well, he would have to get the money, and it was in the trunk, whereupon, he exited the vehicle and went to the trunk, which he had opened from the inside as it had an inside hood release—I mean, excuse me, trunk release, and the raising of the trunk was an indication to the surveillance agents that the heroin had been delivered and that Mr. Hampton was to be arrested at that time; whereupon, he was.

Q. What if anything happened after his arrest? A. He was transported to the St. Louis District Office where he was processed.

Q. Finally, directing your attention again to Government's Exhibit 1-C and 2-C, would you identify those, please? A. 1-C is the package which I tested on the 25th of Feb- **[703]** ruary of '74.

2-C is the package which I tested the following day, the 26th of February, 1974.

Mr. Dye: No further questions, your Honor.

The Court: Mr. Lang, you may inquire.

Cross-Examination

By Mr. Lang

Q. Officer McDowell, what was the name of the field test that you gave on February 26th? A. I believe the name of it is the marquis reagent test.

Q. Marquis reagent test? A. Yes, sir.

Q. Would you explain what happens when you give this test? What takes place? A. Well, the liquid contained within the —it's a small glass vial——

Q. What is this vial usually made out of? A. Glass.

Q. Any specific type of glass, like porcelain? A. Not that I know of, sir.

Q. Go ahead. A. The substance to be tested is placed into the vial and immersed in liquid, in the liquid which is contained in the glass enclosure, and based upon any color changes which the **[104]** liquid changes to, tentative results or tentative conclusions are sometimes made from the color change.

Q. So, when you dropped the substance in the glass vial you observed the initial color form, is that correct? A. That's correct.

Q. And then you watched this color change to some other color, is that correct? A. I don't recall. It may have become darker after a period of time, but I don't recall any——

Q. What color does one observe in this case? A. What are the options?

Q. If we're checking for heroin, what color would we be looking for? A. Be looking for a purple, reddish purple color.

Q. Reddish purple. Are there any other compounds which would give the same purple violet color? A. Yes, sir, I believe there are.

Q. Are there approximately about 45 other compounds that will give out that same color, including a laxative that you can purchase from your drugstore? A. I'm not sure about the number, no; I'm not sure about the laxative which I have never tested.

Q. You're not a chemist, are you? A. No, I'm not.

[105] Q. Is the marquis test specifically for heroin? A. No, sir.

Q. It's not specific; simply tests alkaloids in general, isn't that true? A. As you stated, I'm not a chemist, so I'm not exactly sure.

Q. So you don't even know what the test is? A. I don't know exactly everything that the test is, no, sir.

Q. But there have been other substances that would have given the same reaction? A. That's correct, yes, sir.

Q. So, it was just a speculative conclusion on your part that the substance was in fact heroin? A. That's correct.

Q. Isn't it a fact there are other opium derivatives besides heroin that would have given that same color as well? A. I'm not sure they give the specific same color. It is a test for all opium derivatives; that's correct.

Q. Now, you don't know in fact where Chuck got the heroin from, or the alleged heroin? A. That's correct, sir.

Q. Therefore, you don't know if the person who supplied it to him made any statements regarding its chemical composition, **[106]** do you, other than it was heroin? A. Your question is do I know what the person he obtained it from said to him?

Q. Right. A. No, that's correct.

Mr. Lang: I don't have any other questions, your Honor. I would like to approach the bench.

(Whereupon, the following proceedings were had at the bench, in the presence but out of the hearing of the jury:)

The Court: Mr. Lang has raised a question concerning the qualifications of this witness and concerning, let's say, what Mr. Lang feels were prejudicial statement or inferences regarding this substance testing out to be heroin. I think that the witness was quite clear in explaining that these were tentative field tests and, accordingly, I am most willing to again mention, summarize that fact to the jury, and that there were a number of other substances which likewise could be checked out to be this color. Is that suitable Mr. Lang?

Mr. Lang: Yes.

The Court: Mr. Dye?

Mr. Dye: That's fine, your Honor.
I don't have any other questions.

(Whereupon, the following proceedings were had in the presence and hearing of the jury:)

The Court: Ladies and gentlemen, at the conclusion of Agent McDowell's testimony I would just, with respect to the portion concerning the tests that Agent McDowell has explained he performed, I would mention to the jury, remind the jury, that the agent stated that they were field tests and quite tentative in nature, that any number of substances apparently could likewise result in this same purple reddish color, and that Agent McDowell explained that he was not a chemist, and, accordingly,

as far as his testimony is concerned, the jury should take all those factors into consideration. It was certainly not—Agent McDowell would be the first to state, I believe, he could not tell heroin from other substances.

Is there anything further?

Mr. Dye: Just one thing, your Honor.

(Whereupon, the following proceedings were had at the bench, in the presence but out of the hearing of the jury:)

Mr. Dye: Your Honor, in my direct examination of Agent Sawyer, I neglected to ask him if he could identify the defendant. I would like to recall him at this time unless the defendant would like to stipulate.

Mr. Lang: We will stipulate that he can identify the defendant. It's not an issue.

Mr. Dye: Could we inform the jury of that matter?

The Court: Yes, I will do it gracefully if I can.

[108] (Whereupon, the following proceedings were had in the presence and hearing of the jury:)

The Court: You may step down, Agent McDowell.

(Witness excused.)

* * * * * * *

[110] DEFENDANT'S CASE

CHARLES HAMPTON,

being produced, sworn and examined in his own behalf, testified as follows:

Direct Examination

By Mr. Lang

Q. What is your full name? A. Charles Hampton.

Q. But you prefer being called Chuck, is that right? A. Yes.

Q. Chuck, have you ever been known by any other name? A. I have used an alias since being here in St. Louis.

Q. What was that name? A. It was Michael Chenoworth.

Q. Any other name? A. No.

Q. How old are you, Chuck? A. Twenty-seven.

Q. You have a son named Val, V-a-l, who is four years old by Mary Carter, is that right? A. Yes.

Q. How much education do you have, Chuck? A. Presently I'm credited with about two years of college, correspondence and actual school.

Q. Did you go straight through high school, so forth? A. No, I'm a ninth grade dropout.

[111] Q. You dropped out of the ninth grade. Where was that? A. In Chicago, Illinois.

Q. After you left high school, Chuck, did you go into the service? A. No, I didn't directly. I kind of floated around between public schools in Chicago for about a year, dropping out, missing courses, not passing, really.

Q. But you have been in the military, right? A. Yes, I did.

Q. When did you go into military service? A. I enlisted April 22, 1964.

Q. What branch was that? A. United States Marines.

Q. You say you enlisted. You weren't drafted? A. Yes, I did enlist.

Q. What rank did you achieve? A. I went up to E-4.

Q. Where were you stationed? A. I was stationed in California for a year, Vietnam for 12 and a half months and North Carolina for the last year.

Q. Did you see any combat in Vietnam? A. Full 12 and a half months.

Q. Did you receive any citations in Vietnam?

Mr. Dye: I object to that, your Honor.

[112] The Court: I'll sustain the objection.

Q. (By Mr. Lang) Were you honorably discharged? A. Yes, I was.

Q. Were you in the Marines three years all told, is that right? A. Three years and some days; almost three years and a month.

Q. While you were in Vietnam, Chuck, did you become addicted to any drugs? A. I didn't become fully addicted, but I got the habit over there.

Q. What drug was that? A. I was starting off with opium, it was easy to get over there; it was opium as far as I knew, opium. I can't be technical on it.

Q. After you got out of the service were you still using drugs? A. Yes, I was. I went to heroin.

Q. What period of time? When would that have been? A. I was discharged May 10, 1967, from North Carolina and I had the habit then, and the addiction was becoming pretty

strong and I carried it back to Chicago with me. I went straight home.

Q. How old were you when you returned to civilian life? **[113]** A. May 10th when I got out, I was 23, I mean, excuse me, 20, I'm sorry.

Q. Where were you living after you got out of the Marines? A. In Chicago.

Q. What was the condition of your drug habit about that time? A. When I first went home it wasn't that bad, but it became worse as time went on, and about three months after being discharged, May 10th, September, about September, I was fully addicted.

Q. Did you move away from Chicago? A. Not at that time.

Q. Were you working after you got out of the Marines? A. I was working for a while but the drug addiction hampered me going to work on time or even being accurate and efficient on the job, so I got fired out of two steel mills and the third job I quit.

Q. And you say your addiction was becoming worse at this time? A. Yes, it was.

Q. So you needed money to support your habit, is that right? A. Yes, I did.

Q. Was this when you got involved in the armed robbery? **[114]** A. Not directly.

Q. When did the armed robbery take place? A. This armed robbery took place in North Carolina.

Q. How did you get down to North Carolina? A. By car with a friend.

Q. Just on a short trip, visit or what? A. Well, it was a trip to see some other people and on the way we were just planning on doing anything we could to get some money.

Q. Were you convicted of this armed robbery? A. Yes, I was.

Q. How old were you at that time? A. When I was convicted I was 23.

Q. How long a sentence did you receive? A. Twenty-eight to 30-year sentence.

Q. Twenty-eight to thirty years? A. Yes, it was more than that but it was reduced some later.

Q. How much of that sentence have you served? A. Full time, approximately four years.

Q. Now, you said that you had a ninth grade education when you went into the Marines, is that right? A. Yes, ninth grade dropout. I had further education but it was all self taught.

[115] Q. When did you get your college credit? A. College credit came to me in prison, I acquired that.

Q. Was that through a correspondence course? A. Yes, I had six major courses through correspondence and the rest came in regular school, going to street school.

Q. So you were involved in a program where you were not always in prison, is that right? A. Yes, just before I left I was.

Q. Why did you leave? A. Well, I was being harassed by a particular officer at the unit, and for some reason or another he didn't want to hold true to these new programs of rehabilitation where inmates would leave the unit for certain periods during the day, he didn't believe—I won't say he didn't believe, he showed me he was kind of against it, at least in my behalf.

Q. You were heavily involved in prison reform, is that right? A. Yes, I was president of the grievance committee and two or three other unit activities. I was vice president of the Jaycees.

Q. Did you reach a point where you felt this prison official was going to terminate your involvement in this program outside of the prison? A. Yes, I did by his direct comment to me. He let me know that one slip—a statement to the——

[116] Mr. Dye: I'll object.

The Court: I'll sustain the objection. I think he's gone into it enough. I'll order that stricken, and the jury instructed to disregard it. It's hearsay, and I don't think it's proper in this case.

Q. (By Mr. Lang) So, you walked away from that program, is that right? A. Yes, I did.

Q. Where did you go? A. Where did I go after I walked away?

Q. Yes. A. I went through North Carolina and Virginia. I stopped at Norfolk, Virginia. I wired—I called home first and had some money wired to me and I caught a bus all the way to Washington, D. C., and at Washington, D. C., I went to Baltimore and I was running out of money again, I called home and had some more money wired to me, and from Baltimore I went to New Jersey, Atlantic City, New Jersey,—Ocean City, first, and then Atlantic City.

Q. When did you meet Mary in Chicago? A. In approximately late 1967.

Q. I'm not talking about when you first met her. When you met her en route to St. Louis, or you didn't? A. After I escaped I finally made it back to Chicago **[117]** from New Jersey, money was running out and nobody could wire anything, so I stayed in New Jersey, I met some people, they let me stay with them,

not knowing what I was doing or anything, they just knew I was in bad shape, and they took me in and I stayed with them for approximately six or seven days, until money was gotten together. I was steadily calling home, and when I got back to Chicago I looked up Mary.

Q. Did you all come to St. Louis together? A. Yes, we did.

Q. Now, when you got to St. Louis where were you living? A. We first stayed at the Carousel Motel for about a week.

Q. Where is that located? A. On Kingshighway. I'm not sure of the street that it's near, but it's on Kingshighway.

Q. Then did you move somewhere else? A. We moved to the Kingsway Apartment Building on Kingshighway; 902, I think, is the address.

Q. Your son was here with you in St. Louis, is that right? A. Yes.

Q. How were you supporting yourself at this time? A. Well, I have been gambling all of my life, and hustling, I shoot dice, I shoot pool, pretty fair, I guess, and I play cards pretty good.

Q. Did you reach a point—Mary brought some money with **[118]** her as well? A. Mary had approximately $600 when we left Chicago.

Q. That money, I take it, was starting to run out? A. Yes, it was.

Q. Now, you have heard testimony about James Gray, that you solicited him to get involved in a drug transaction, did you solicit him or did he come to you? Just what happened? A. James Gray came to me after we had become pretty closely acquainted through this pool shooting thing. He was, as far as I was concerned, a hustler like myself. He shot pool pretty good. As a matter of fact, him and I were the best in the area as far as known by anybody, or said anyway, and we became pretty tight behind this mutual thing of being able to shoot pool

good. So I became closer to him than I had to guys like Gus, Kenny, Mike and other people that were around the area, that were around The Pud, usually, and I told him that I was uptight, that money was running out and I was in a situation where I couldn't just go and get a regular job. I didn't tell him why, because I was on escape or anything, I just left it open that I was uptight, and I couldn't get a job that easy, I was looking around but I couldn't go and apply for something like a post office job where I might be checked. So, I don't know what he took from that, but that wasn't the important thing, the thing was I did explain to him I was uptight and I told him **[119]** if he knew anything about a way to get some money there —or here in St. Louis that would be kind of clean that I would go for it, and I needed some help.

Q. Did he bring an idea to you? A. Not at that time. He said he had something in store; he said he would think about it, and that's all.

Q. When did you next discuss any type of drug?

When did you first discuss with him a drug transaction? A. I didn't even bring the drug transaction to him; it was brought to me. As far as the discussion, he just——

Mr. Dye: Your Honor, I don't think that is responsive.

The Court: Sustained.

Q. (By Mr. Lang) Did he initiate the discussion about the drug transaction? A. Yes, he did.

Q. When did that conversation take place? A. About three days after this first mention to him of being uptight. When I first mentioned to him I was uptight, about three days later.

Q. Where did that conversation take place? A. In The Pud.

Q. Was there anyone else there present who heard the conversation that you know? A. Guy named Kinney and another guy named L. C.

[120] Q. What did James say to you during the course of that conversation? A. He didn't speak directly to me. He was speaking to all three of us.

Q. What did he say to the group? A. That he had something that he was working on where we could make some money and I inquired—I asked the question, I was curious as to what it was, and he said he just had a little deal working where we wouldn't have to come up with anything, any money anyway, and we could make some money.

Q. He didn't go into more detail about it? A. Not with L. C. there, he didn't like L. C. too much because he said he was loose-mouthed or something anyway, but he discussed it more with Kenney and I.

Q. When did he first go into detail about the transaction? A. That same night; later that night.

Q. Where was this conversation taking place? A. In The Pud.

Q. Who was there at that time? A. Gus was there, but he kind of cut Gus out and told me that he would prefer for me to be the main man, because he felt that I could handle it better, I had more finesse, as he called it.

Q. What was the substance of his conversation with you? **[121]** A. That he had a friend that was either a pharmacist or worked in a pharmacy, and that he could get something that would give the same reaction as dope, which in our conversation, our jargon, dope meant heroin, that's all we discussed it as, but he said this will give the same reaction, and he had some guys that he knew that he had known from Colorado, that's the place he mentioned, and he said that, well, they were here now and they were in the dope business and they were looking for a buy, and that they had been burnt before, so they should be easy pickings for something like this here, and all we were waiting for was for this pharmacist friend of his to come up with whatever he had.

Q. Did he mention the name of the substance? A. He didn't mention the name of it. He said it was just a compound of stuff. I'm not that familiar with the new drugs they are using on the street.

Q. Did he mention the pollutant? A. The pollutant was mentioned later.

Mr. Dye: Your Honor, I'll object.

The Court: I'll sustain the objection.

Q. (By Mr. Lang) You don't know the name of the drugs he was referring to? A. Not for the original mixture.

Q. Just an unspecified concoction? **[122]** A. Yes, all except for one name.

Q. What was that name? A. He mentioned later that he would use something that they were shooting on the street, just like heroin, called pollutant, but he brought it up later and said it was an additive that would strengthen this compound to really make it seem like dope.

Q. You say this was called pollutant? A. Pollutant is all I know.

Q. Do you know how to spell it? A. No, I haven't been able to find it. I have been looking for it.

Q. You say you've been looking for it? A. Looking for it, trying to find out the term.

Q. When was the next conversation that you recall having with James and Gus setting up this transaction? A. Again that night. This is the same day of when the conversation was first introduced.

Q. Would you relate what went on in that conversation? A. He told me he had—had been getting phone calls but he told me one of the calls the guy said he couldn't handle it that night, he couldn't get down to him. This was some guy named Archie

that was supposed to be at a pharmacy or something, and he said the guy would take care of it tomorrow, **[123]** which was the next day, and after he took care of that, he said he would—soon as we got this package in our hands, he said he would contact these buyers, and we'd set it up.

Q. Did James introduce you to a person who was going to be a buyer? A. Yes, but this was only at the sale when I made this first sale to him.

Q. Was this person black or white? A. This person was black.

Q. What was his name? A. This was a guy named Frankie.

Q. His name was Frankie? A. All we knew him by was Frankie. All I knew him by was Frankie.

Q. When did you last see Frankie? A. At the Federal Drug Administration's office when they were questioning me.

Q. That was the day on which you were arrested? A. February 26th, right, that night.

Q. Who was questioning you? A. Federal Agent Sawyer and the other one, McDowell, James, all I knew him by was Jim, but the two who appeared here as a witness, anyway, they were questioning me, and in walks this guy Frankie, and I'm thinking that he's busted at first, **[124]** and he starts to smiling and he asked me a question of "Where's my money at, that bad stuff you gave me?"

Q. This was the first person whom James introduced you to to make a sale to, right? A. Right, at the Gregory Lounge.

Q. Where is the Gregory Lounge located? A. Somewhere near Olive. There's a place called Musical Sales on 3007 Olive, which I went there to get a job, and this Gregory Lounge is in an apartment like complex about two blocks from there, not too much more. I don't know the streets in St. Louis that well.

Q. So you made a sale of, we'll call it turkey, this fake or counterfeit drugs to Frankie, is that right? A. Yes, this definitely was. I saw snuff put in this.

Q. Who supplied you with those? A. James came over with the original package.

Q. Did you see him mix it up? A. No, he had it mixed already. This is what he came from his pharmacist friend with the next day, but I saw him put some snuff in it that he said he was adding for color to make it look like brown dope that they are getting today

Q. After this sale, when you made this sale you believed that you were selling some counterfeit drugs to Frankie? A. Some knd of drugs that would give the effect of dope; **[125]** that's all I know.

Q. Did you later learn that Frankie was looking for you because he thought you had made a bad sale? A. Right, this is the message I got from Gus through James. He said James told him that Frankie had called——

Mr. Dye: Your Honor, I will object. This is multiple hearsay.

The Court: Sustained.

Mr. Lang: I will withdraw the question, your Honor.

Following this initial termination that you were involved in with Frankie, did you have any more conversations with James concerning other buys, setting up transactions with another buyer? A. Yes, but I—I don't remember how long it was. It probably came immediately after that—the split up of the money, which was later that night. It didn't come right into focus right away.

Q. "Split up of the money," what are you referring to? A. Well, James and I split up some money and we gave Gus some for riding with me, he was supposed to be my riding

partner, like I was a big dope dealer and I had to have somebody with me.

Q. So when was the next conversation? When did the next conversation take place that you had with James about another **[126]** narcotic transaction? A. Well, I started to mention it earlier, but it was later that night, I did bring it to James then, told him, I said, "I like what that was." I didn't know at the time this Frankie guy might be out after me, something, I didn't know that until the next day, but, anyway, I mentioned it to him and told him it was pretty nice, told him if he could do something like that again I would be straight, by then I could get a job, something to tide me over, hold me over, because the money we split on this first deal was kind of small, for what I needed for the family anyway.

Q. How much was that? A. I think we split up around $200, and I gave Gus—well, we together gave Gus about 30, we split 170; James took $35.00 out of 170 for this Archie, the pharmacist guy that was supposed to supply us with this fake garbage, and whatever he supplied, well, it had been arranged to give him some money back, plus a little profit.

Q. So when you told James that, you knew, you were satisfied the way the first deal had went—— A. Right.

Q. ——what did he say? A. Well, he just—he didn't mention anything about a deal at the time, I really was trying to solicit it out **[127]** of him, you know, did he have any other friends that were this foolish.

Q. When did he next talk to you about setting up another sale? A. Well, the next day, we got into a small conversation about it, and he mentioned that he might have somebody else, but we would wait and see because he said that this pharmacy guy would—he wanted, you know, a better deal

next time, he said he didn't get enough money; figured we had made some money.

Q. Following that conversation when did you next discuss setting up a transaction? A. I guess it was about two or three days then.

Q. Who was present at that time? A. He didn't have anybody present but me because I went to his room.

Q. This took place in James' room? A. Right.

Q. Westgate Hotel? A. Well, it started in the lounge downstairs, and his girl friend, Mary, was there, and he didn't want to discuss it in the lounge because we couldn't get any privacy, so he said, "Let's go up to the room."

Q. What was the substance of the conversation you had in the room? **[128]** A. Well, he brought up the fact he had a good buyer here, this was some other people he had known in the past, he didn't say where they were from or what, but he said they were ready to buy and that they were white. So I asked him, "Well, what is going to be the whole thing on this deal? Are we going to be able to get enough of this same thing we just sold to this Frankie dude?" By then I knew, or I had heard rumor that this Frankie was kind of looking for me, so I told him that I really wasn't too much worried to split by the fact he mentioned these white guys, instead of going to more blacks, I felt it was more safe, because I didn't think whites would be coming in the neighborhood looking for me that easy.

Q. Did James tell you what this substance was going to be? A. He never mentioned what this basic substance was. I knew pollutant was added, and I saw snuff put in before; but the pollutant was supposed to be the strong additive.

Q. So you believed the substance that you were going to next sell to those white buyers was the same one that you had

sold to the black buyer, Frankie, earlier, is that right? A. Direct same thing, right.

Mr. Dye: Your Honor, I'll object. This is argument, it's calling for a conclusion on the part of the witness.

The Court: Sustained.

Q. (By Mr. Lang) When did you all make arrangements to **[129]** set up the sale that took place on February 26th? A. At least three days before, February 22nd or 21st.

Q. Where did you all make these arrangements? A. Again, we made them in his hotel room because we had to discuss where we were—or how we were going to get the money together to pay this guy Archie. James claimed Archie wanted his money ahead of time this time for this fake mixture. Not fake, I don't know really what it was, but whatever this mixture was, he wanted his money ahead of time.

Q. You were supposed to provide some money, then? A. I was supposed to provide half of it because by me being one of the principals in the first transaction, I split out half, so now, I'm a half partner, so I was supposed to put up half of the money and give it to this pharmacist or wherever he was, whoever he was.

Q. So, did you give money to James? A. I didn't have any money to get together for him. The hustling was slow. I had used all my money for the family. I gave it directly to my common-law wife, Mary.

Q. So, in spite of the fact, James decided to go ahead with the transaction anyway? A. Well, he said he would work something out and he probably could talk to the guy, and once he got it together we'd be able to make the deal.

[130] Q. When did you make the sale on the 25th? A. The sale was the night of the 25th. We had been, you know, a lot of phone calls all that day, I had been hanging around The Pud, and James and whoever he'd been talking to, other men, you

know, they had been calling, and calls came in to James, he didn't make calls just only, calls came to him.

Q. This sale was made to Officer Sawyer, the person who you subsequently found out was Officer Terry Sawyer, right? A. Right.

Q. He was in the company of Officer McDowell, Agent McDowell? A. Right.

Q. And the substance that you sold at this time on February 26th, this was given to you by James Gray? A. Yes, it was. On the way to the transaction, about one block from Delmar on Kingshighway, going towards Lindell, I don't know what the street is, we had just passed a little club that was closed or something, and he told me then, he said, "You better take the package now."

Q. He handed you a package? A. Right.

Q. Was it a tinfoil wrapper similar to these? A. Yes, it was bulky. It was heavy foil, I know, because my wife uses foil cooking.

[131] Q. You are not denying that you made a sale to Officer Sawyer? A. No, I'm not.

Q. Of a substance? A. No, I'm not.

Q. Now, did Officer McDowell make some type of test at the time that you delivered this substance to Officer Sawyer? A. On the night of the 25th, which was the first sale, as they said, I handed the package over to Terry, who was Agent Sawyer, for inspection, which he hadn't handed me any money, no transaction had been made at the time, I just handed him the package and told him, "Here it is," and he looked at it and he turned around and said, "Jim, you want to check it out?" and through checking it out, all I saw Jim do was take some type of long pin that had a flat end, flat enough for—I don't know what kind of pin it resembles, something like a quill pin that women use, a long pin, but it had a flat end, enough where he

could take some of the mixture out of the powder, and he was supported to be snorting it but he bent over in the back seat with James, James was in the back seat with him, and he bent down where I couldn't see him, so I'm just talking. Terry was holding my attention pretty well, talking about the money and so on, and the quality of the drugs I'm supposed to be selling, and all the time I'm thinking that Jim is snorting, or what they call snort- **[132]** ing, taking it up his nose to see what effect it would give. That was the test, as far as I understood it.

Q. And he told you that—Jim told you the substance was all right? A. No, he started sneezing. He said, "What you got in this stuff?" And I said, "That's the mixture on it," and I was kind of skeptical then, but he just said, "Well, it will do; it's all right." He said, "It's kind of weak." So I told him, I said, "You can get better stuff if you came up with bigger money," and, you know, this is when Terry took over the conversation and we started discussing a future deal.

Q. Did you discuss a future deal there in the car? A. Yes, we did.

Q. What arrangements did you make as to the future deal? A. Well, they wanted to do something the next day, which I wasn't sure we could be ready for after all the trouble that previous three days of getting this mixture together.

Q. That would have been February the 26th, is that right? A. Right.

Q. When did you finalize your plans? A. Well, on the way back, when they dropped us off on Delmar, they did drop us off, they turned around, we were facing away from Delmar on Kingshighway, and they turned around and went back towards Delmar on Kingshighway, and during that time **[133]** they discussed the fact of where they could contact me, we didn't have a phone in our apartment, the wife and I, so I told him they could call me at The Pud, and they asked me the number, James gave them the telephone number of The Pud, and they asked me

who to ask for, and I just told them Chuck, because that's the name I go—that's my name, or the name I go by, that's was enough, and during this time they asked me would they be able to get better quality dope, and I told him, I said, yes, I would have to probably make a trip for it or, you know, see somebody, I would have to make connections, I said, because they got—I just made an excuse, I told them they had gotten the last package of anything I had, so this way I could probably try to bide for time, I was—caught myself trying to get some extra time.

Q. Now, this conversation was taking place when? A. On the way back to Delmar.

Q. Did you talk to Officer Sawyer the next day, on the 26th, on the phone? A. Yes, I did.

Q. Would you relate the substance of that conversation? A. Well, he had told me he would call at a certain time. Well, my regular habit was to get up very early and go around The Pud and catch anybody I could on the pool table, try to make some money. I was around The Pud earlier all that morning, **[134]** Gus and I really, we were standing around waiting, and he finally called about 11:00, 12:00 o'clock, sometime in the afternoon, it was around 12:00 approximately, I don't know how close, but he called.

Q. Would you relate the conversation that you had with him? A. Well, he called and he pointed out the fact that he would be ready, he said he was ready with the money but he said he wouldn't be ready to make it down there in that area for about an hour, so I told him that this was good, I said, because I hadn't gotten ready yet, I had made a little contact but my people hadn't come through yet, and he just told me, he said, "Well, I'll call back and find out how things stand." This was the first call at The Pud, and before he got off the phone I let him know that there was another place I preferred him to call me, and it was across the street.

Q. What was the name of that place? A. This was Ja-Lo's Lounge, they had a better pool table, so I figured I would lay over there, have a little better action.

Q. How do you spell Ja-Lo? A. J-a hyphen L-o.

Q. Did you later that day receive a phone call from Officer Sawyer in Ja-Lo's Lounge? A. Yes, I did.

[135] Q. Would you relate what the subject of that conversation was? A. He told me he was ready to make the deal, and I told him I needed a little time—well, I didn't explain directly that I needed time, but this was the substance of me really trying to hold him off a little bit. Really, there had been another call, it was two calls to Ja-Lo's, it had to be, because the first call I tried to get some extra time; the second call is when I told him I was ready. But the first call, the girl at the lounge—what's her name?—Regina—answered the phone and she said that he had called for me, and then when I came back in—I wasn't in—but it was another call that she said she received, some guy named Terry had called for me is all that she said, and I told her, "Well, this is good, because I didn't want to talk to him," or anything, and I wanted to try to hold him off, and told her the next call, if she could, would she look out the door to make sure I wasn't on the street because I wanted to receive the next call.

Q. So, did you receive that call? A. Yes, yes, I did.

Q. Would you relate what the substance of that conversation was? A. Well, we discussed the time.

Q. That was Officer Sawyer? **[136]** A. Officer Sawyer.

Q. Go ahead. A. We discussed the time and we didn't go into the price too much, but we discussed the time of making this transaction, the place, the quality of the heroin supposedly, and quantity, and really a few other general comments.

Q. So again at this point, from your standpoint, you were just participating in a charade, is that correct? A. Yes, because

James was gone at this present time to secure the stuff. This is why I'm trying to get the put on me because James had been gone all morning, he had been gone since before 12:00.

Q. Where did you think James was going to get the substance? A. He was supposed to be going to get some dope on Sarah and Olive—in the area of Sarah and Olive, because I had kind of finagled that information out of him overnight, he had gotten high, he said he had gotten high and he looked high, as far as I know, I have been addicted myself and he had all the appearance of just having shot up some dope or something, but he said he was all right, and we were sitting in his room talking, and he told me he had some people up on Sarah and Olive that he had gotten pretty close to and he figured he could make a good deal with them.

[137] Q. At this point what did you understand him to mean by the terms of what he was about to get? Did you understand what he was about to get? A. This was supposed to be the people for the pollutant.

Q. And not heroin? A. No, because this pollutant thing was what steadily impressed in my mind—he steadily impressed in my mind was this strong additive over all this other compound to really, you know, strengthen this fake dope.

Q. Now, when did you see James on the 25th—26th, rather, and receive from him the substance that you later sold to Officer Sawyer? What time of day was this? A. When he finally came back, I guess it was about 4:00 o'clock, approximately.

Q. Had you seen James earlier in the day? A. Right, at The Pud. Well, I got him up out of his bed that day, and he was kind of reluctant to come on out, but I kind of pulled him, told him, "Come on, let's go ahead and get this last money, because this is probably it." I really kind of wanted to cut the deal because I was—I didn't want to make over two deals with these white guys, especially two days in a row. I figured by

them being close maybe they wouldn't have a chance to fill it out, and know that we had duped them.

Q. So did you have to give James—did James ask you **[138]** for any money when you were in this hotel room? A. No, he just told me he had shot up most of his money and he was pretty low, so I told him I would put in his part that he had to pay for the pollutant, it was supposed to be $30.00, for what we were trying to get worth for this pollutant. Street price was approximately $6.00 a pill, or capsule, whatever they call it, and we wanted five of them to strengthen up this big batch we were supposed to be having this time.

Q. Big batch of what? A. Of this mixture, this Archie's compound, or this pharmacist's compound, whoever Archie came from, I don't know, but we had this already, and we needed pollutant because I didn't want to go and have this guy Jim test it again, you know, go sneezing, you know, and maybe come out, I don't know what might have happened.

Q. So you did give James some money? A. Right, in front of The Pud, and this is when he was trying to catch a cab, and Gus called a friend of his, it was a friend of Gus that was driving this cab that James got into go and get the pollutant; supposedly anyway.

Q. And then James later returned? A. He returned, and he had some brown substance in some tinfoil and it was a real small amount, and I just asked him, I said, "Well, this is all you get for," you know, "$30.00?" **[139]** and this is when we got into kind of a light argument, and he was acting high, so I figured he had went and shot up some of the money and dope and got some of the pollutant——

Mr. Dye: Your Honor, I'll object.

The Court: I'll sustain the objection; the portion about what he supposed and all will the stricken and the jury instructed to disregard it.

Q. (By Mr. Lang) So, James gave you these tinfoil packets? A. Yes, he did.

Q. How many did he give you? A. He gave me two, two small packets, very small, nothing like the size of those exhibits.

Q. And these are the packets that you later took and sold to Officer Sawyer and McDowell down at Maryland and Kingshighway? A. No, these are the packages that were dumped in this big compound and mixed all up, sifted it through and everything.

Q. Who did this mixing up? A. James and I sat in his room and did it.

Q. And then you transferred them to smaller packages, is that what happened? A. Transferred it to one larger package; in other words, the compound was in one large package, and these two small packages, the one he had opened up and showed me this small amount, **[140]** well, he had another one, and when we finally got up in his room he just comes out with this other one and said, "Well, this is all of it," which still didn't satisfy me, but we mixed it up in the big package and put it all together in the big package. First we opened and sifted it out, we took it out of all the foil and sifted it through one of the girl friend's stockings with a hanger, and just kept sifting it through, trying to make sure the pollutant would mix up, or supposedly pollutant.

Q. What type of container or wrapper was the stuff in that you sold to Officer Sawyer on the 26th? A. In a tinfoil wrapper.

Q. Who put it in the tinfoil wrapper? A. James fixed it up after I finished sifting it.

Q. You did in fact sell a substance to Officer Sawyer on the 26th? A. Yes.

Q. Did you know at any time either on the 25th or the 26th of February that you were selling heroin? A. No, I did not know.

Q. Did you ever intend to sell heroin to Officer Sawyer or anyone else? A. No, this was the fake out; I thought I was selling some kind of compound with pollutant in it, which I don't know **[141]** what pollutant is till today.

Mr. Lang: I have no further questions.

You may inquire.

The Court: Excuse me just a second, Mr. Dye, maybe we will have a ten-minute recess.

(Whereupon, short recess was taken, after which the trial proceeded as follows:)

The Court: Mr. Dye?

Mr. Dye: Thank you, your Honor.

Cross-Examination

By Mr. Dye

Q. Mr. Hampton, I believe you testified that your version of this incident is that you were setting up a deal with counterfeit substances, is that correct? A. Yes, sir.

Q. And I think you stated that you had risen to the position of vice-president of the Jaycees when you were in the penitentiary in North Carolina? A. Yes, sir.

Q. Do you think that is consonant with the position which you reached in the Jaycees in North Carolina? A. To an extent, sir, yes.

Q. Oh, is it really. Now, I think you stated also that you had had several jobs after you came back to Chicago from Vietnam **[142]** is that correct? A. Yes, sir.

Q. You were fired on the first two, but that you quit on the other? A. Yes, sir.

Q. And I think you also stated that you were convicted of armed robbery in North Carolina, is that correct? A. Yes, sir.

Q. What was your sentence on that? A. Full sentence was 28 to 30 years and four to five years.

Q. And what happened at the end, during your serving of that sentence, which made you want to escape? A. Well, I felt that the program that I was in, I was being—I was going to be terminated.

Q. Oh, I see, and you just thought since the program was terminated there wasn't any need for you to hang around, then? A. No, it wasn't on that level. I thought that I would be terminated from the program, not the program terminated.

Q. I see. So the thought of your not continuing your education was just so great that you couldn't stand to be in prison anymore? A. No, sir.

[143] Q. What was it, Mr. Hampton, what was your problem? A. The fact if I was terminated from the program for any menial, small violation of the penal regulations, that I would be returned to the close custody in the prison walls, which is called central prison.

Q. Isn't that just what I got through asking you? A. I don't know how you asked it; would you ask it again?

Q. The thought of going out of that program and going back into the general population was just to great for you to bear, isn't that true? A. Yes, sir.

Q. Now, your version is that Mr. Hutton was the mainspring behind all this, is that right? A. Yes, sir.

Q. And you, by your statement earlier, I think you stated that you had been addicted to heroin in Vietnam? A. Yes, sir.

Q. And so you know what heroin is, don't you? A. Yes, sir, I do.

Q. And you had no way of knowing in these three transactions that you had dealings with, the first with I believe the individual by the name of Frankie? A. Yes, sir.

Q. And the counts in this indictment, you had no way of **[144]** knowing that material was not heroin? A. I didn't test it, sir.

Q. I think you stated that Mr. Hutton's statement was that the substance which you had sold to Frankie on the first buy, and to the agents on the second and third buys, contained pollutant, is that correct? A. They call it pollutant in the street.

Q. And I think you also testified that he put some snuff in it? A. This was the sale on the 25th, the second transaction.

Q. Did you hear the chemist testify yesterday? A. Hear the who?

Q. The chemist. A. Yes, sir, I did.

Q. Did he say anything about snuff in any of the analyses? A. No, I didn't, I didn't hear him mention any other compounds.

Mr. Lang: Your Honor, may we approach the bench?

(Whereupon, discussion was had off the record at the bench, in the presence but out of the hearing of the jury.)

The Court: I'll overrule the objection. He can answer the question if he can.

Would you repeat the question?

(Whereupon, the reporter read the last question and **[145]** answer.)

Q. (By Mr. Dye) Now, did you ever—I think you made a "burn", what is called in the vernacular, with Frankie, is that correct? A. Yes, I did.

Q. Did you ever try to contact Frankie again to make another buy with him? A. No, I didn't.

Q. Why didn't you? A. I was afraid that there might be some trouble, physical violence.

Q. For what reason? A. For burning him for his money.

Q. And you were contacted on the 26th, I believe, by Agent Sawyer, is that correct? A. Yes, I was.

Q. And that was to make arrangements for a second transaction? A. Yes.

Q. So apparently you didn't feel like Mr. Sawyer would be any problem to you, since you burned him by your statement on the 25th, you didn't think that he was going to give you any trouble on the 26th, is that correct? A. Yes, sir.

[146] Q. So in the one instance you didn't want to contact the guy because you burned him, right? A. Yes, sir.

Q. But in this instance you thought you burned him, with Agent Sawyer, you thought you burned him on the first transaction with him, but yet you entered into another transaction, is that correct? A. Yes, sir, he said he was satisfied.

Q. Now, weren't you a little edgy when you made this deal on the 25th, as far as being found out as to the fact that that substance was, by your claim, was not heroin? A. Yes, sir, I was slightly edgy, but like I said, they were white, and James said they had been burnt before.

Q. I don't want to know what James said, I'm just interested in what you have to say. I think you stated that you were very satisfied with the results of the burn with Frankie, is that correct? A. Yes, sir, the money, financially.

Q. And why did you need the money? A. Well, I didn't have a job.

Q. You wanted to get a job then or what? A. I had already secured a job, that week, of these two sales.

Q. I thought earlier in your testimony you stated that **[147]** you couldn't get a job and that was the reason why you entered into this in the first place. A. I had a job but I wasn't working yet, I was due to go to work on Friday of that week I got arrested on the 26th, which was the 26th.

Q. You didn't say that in your direct, did you? A. I wasn't asked.

Q. Well, you didn't say it? A. No.

Q. I think your statement is that this transaction, or these three transactions were initiated by your remark to Mr. Hutton, or Mr. Gray, inquiring of Mr. Hutton if he knew of a way to make clean money? A. Yes.

Q. What has happened here by your claim that you didn't know this was heroin, then, was that clean money? A. What, the transaction?

Q. Yes. A. It was clean money behind the fact that I didn't have to do anything illegal. I was dealing with the underworld as far as I was concerned.

Q. What is the vernacular term for what you did to, say, Frankie? Is there a specific term? A. Not directly as far as more than a burn.

[148] Q. Well, how about ripping off? Would that be an accurate description? A. Right.

Q. And that is clean? A. That is clean money because you're not dealing with the police, you don't have police trouble; you're dealing with underworld people.

Q. So if you weren't dealing with anybody other than police—well, let me ask you this. Strike that.

Let me ask you this: If you were dealing with just a common ordinary citizen, would that be a burn? A. You wouldn't deal with a common ordinary citizen buying dope.

Q. Oh, really? A. Not that I know of.

Q. And as far as you know where did the first mention of the introduction into your relationship between yourself and Mr. Hutton, where did that introduction take place? A. At The Pud Tavern, Lounge, Pud Lounge.

Q. I think you stated that you shot pool together quite a bit? A. We were together approximately three weeks before this first transaction, or the first transaction that I'm indicted on, excuse me.

[149] Q. I'm sorry, would you please repeat? A. The first transaction that I'm indicted on, that I'm charged with. This Frankie thing came about 12, 15 days, almost two weeks after I first met him.

Q. I think you also stated that Mr. Hutton approached you with a fellow named Kenney and L.C., in the Pud Tavern one night, is that right? A. Yes, he did.

Q. What was the substance, if you would enlighten us, as to the conversation at that time? A. Well, he brought—pointed out that he had a setup, he wouldn't mention specifically what it was in front of L.C. because he was skeptical about him, as he said later, but he waited until L.C. got out of our presence, then he brought the conversation to Kenney and myself about a deal with a guy that had been burnt that would take another burn if we could set him up.

Q. Let me ask you this: Is Kenney here today? A. No, Kenney isn't.

Q. Is L.C. here today? A. No, he's not.

Q. Why aren't they here, do you know?
Mr. Lang: Your Honor, I object.

The Court: I'll sustain it as to the form of the **[150]** question.

Q. (By Mr. Dye) I think you stated also that after the first buy, the first burn in your statement, was successful that you quote tried to solicit further involvements of this kind using what you have said to be "turkey" substances with Mr. Hutton; did you solicit? A. If he could come up with another one, I needed more money, I did bring the point to him, yes.

Q. So your position then is you didn't know the stuff was heroin, right? A. At no time.

Q. And I think you are claiming, if I understand it, you are claiming you were entrapped in this? A. That's the legal term my attorney told me about; I just brought the circumstances.

Mr. Lang: Your Honor, I object to the use of the word "entrapped."

The Court: Sustained, order the answer stricken, the jury instructed to disregard it.

Q. (By Mr. Dye) I think you also stated that your friend Gus was told by Jule that he wanted—that Jule wanted you to be his main man? A. That what? Repeat the question.

Q. That Jule wanted you to be his main man. Did Jule **[151]** say anything to Gus Logwood about that? A. No, not that I know of. I'm not sure. I didn't hear anything of that nature.

Q. And this Gus that you have been referring to, is that the individual who testified earlier today? A. Yes, he is.

Mr. Dye: No further questions, your Honor.

Oh, just a few.

Do you know what is the term for "dizzope", do you know what that means?

A. That's a term, street term used for dope.

Q. And "spizoon," s-p-i-z-o-o-n, do you know what that is? A. That's a street term used for spoon.

Mr. Dye: No further questions.

The Court: Mr. Lang?

Redirect Examination

By Mr. Lang

Q. You testified that in one of the drug transactions that was taking place James put some snuff in the compound, is that right? A. Yes, as far as I knew; this was in his room.

Q. Now, which transaction were you referring to, the sale to Frankie, the first sale to Terry or the second sale to Terry? **[152]** A. This would have been the first sale to Terry, when Jim started sneezing.

Q. You say that it was snuff; how do you know it was snuff? A. He had a canister in his room that looked like a snuff canister. I'm using his term, snuff. That's all I thought would be in it.

Q. You don't know for a fact that it was snuff; you just assumed it was snuff? A. I just assumed it because it was brown looking like snuff.

Q. Mr. Dye asked you if you knew in fact why one of the individuals that was a witness to a prior conversation you had with James was not present in the courtroom, named Kenney. Do you know where Kenney is now? A. I don't know, but my wife asked me why wouldn't he testify, and I asked her would she check on it. She said that Kenney was in some police trouble or something.

Mr. Dye: I object to that as hearsay.

Mr. Lang: Mr. Dye opened up the question.

Mr. Dye: If he wants to impeach his witness, that's fine.

The Court: I'll sustain the objection and order the answer stricken and the jury instructed to disregard it, on the **[153]** grounds it's hearsay as to what his wife said. If he knows——

Mr. Lang: I don't have any further questions.

Your Honor, I do have one other question.

Chuck, would you describe what heroin looks like? A. The heroin I have seen since I have been back, since I have been out of the penitentiary, has been brown. Before that it was usually white, a white powdery flour-like substance.

Q. Looks like flour, sugar? A. Looks like flour, regular flour; now it's brown, though, they have it brown now as far as I know.

Q. Did you at any time taste or test any of the substances that you were selling to any of these people? A. No, sir, I did not.

Q. Why didn't you?

Mr. Dye: Your Honor, I will object. I think this is beyond the cross scope.

The Court: Sustained.

Q. (By Mr. Lang) When you were setting up the second counterfeit transaction with Agent Sawyer, you had already made one transaction with him, right? A. Yes, sir.

Q. And in your mind the second transaction was a counterfeit transaction as well, right? A. Yes, sir, it was.

[154] Q. Why weren't you afraid of Officer Sawyer, setting him up?

Mr. Dye: Your Honor, I object. I think the witness has already answered.

The Court: I think he has too, but I'll let him answer once more. Overruled.

Go ahead and answer the question.

The Witness: Would you repeat the question, please?

Q. (By Mr. Lang) Why weren't you afraid of making another sale to Officer Sawyer after you had set him up the first time? A. Sir, there was several reasons involved. First, that

he was white, he could not have have easy access to the area, because it was an all black area, as far as I could see, and he had expressed satisfaction, or his tester had, the tester was the other agent, McDowell, or Jim, and he expressed satisfaction, although he claimed it was weaker than what he had expected, but his expressed satisfaction made me believe the fake stuff was good enough to at least try again, and then after that I wouldn't worry because this was supposed to be the big sale.

Q. James told you this person was an experienced buyer that offered to sell you the——

Mr. Dye: I'll object, your Honor. This is a leading **[155]** question.

The Court: I'll sustain the objection.

Q. (By Mr. Lang) Just a few more questions.
Who initiated all of the sales that you made to Officer Sawyer?

Mr. Dye: I think we've gone over this.

The Court: I think it's repetitious. Sustained.

Mr. Lang: I have no other questions.

The Court: Do you have anything further, Mr. Dye?

Mr. Dye: No further questions, your Honor.

The Court: You may step down.

(Witness excused.)

The Court: We will be in recess until 1:30.

(Whereupon, the court was in recess until 1:30 o'clock p.m. of Tuesday, May 7, 1974.)

TUESDAY AFTERNOON SESSION, MAY 7, 1974

Pursuant to adjournment as aforesaid, at 1:30 o'clock p.m. of Tuesday, May 7, 1974, the court reconvened, present and presiding as before, and the trial proceeded as follows:

(Whereupon, the following proceedings were had out of the presence and hearing of the jury:)

The Court: Mr. Lang, have you rested?

Mr. Lang: Yes.

The Court: Defense has rested.

PLAINTIFF'S REBUTTAL TESTIMONY

(Whereupon, plaintiff, to rebut the testimony offered by defendant, offered testimony, oral and documentary, and made admissions as follows, to-wit:)

JULE HUTTON,

being produced, having been previously sworn, testified in rebuttal as follows:

Direct Examination

By Mr. Dye

The Court: Mr. Hutton, I will remind you that you testified earlier in this case and under oath, and that that oath still applies.

Q. (By Mr. Dye) Mr. Hutton, could you briefly tell the court and the jury in your relationship with the defendant when the question of narcotics was first discussed? A. The question of narcotics was first discussed in The Pud Tavern on the evening of February 25, 1974.

[174] Q. What, if any, conversation ensued between you and the defendant? A. Before the conversation started, I was play-

ing a game of pool and he was standing there next to the wall, and I was dressed in a short-sleeved shirt, slacks, where my arms were visible, and he saw some tracks.

Q. What do you mean by "tracks"? A. Needle marks from using heroin before.

Q. What if anything did he say in response to seeing your tracks, as you call them? A. Well, after I lost a game of pool, myself and Mr. Hampton engaged in conversation where he stated that he needed some money, and he knew some people that had heroin he could get, and I told him, I said, "I know some people that would be interested in buying some."

Q. What if anything else did you say? What did he say after that? A. Well, he then told me, said, "Well, why don't you try and get in touch with those people and let me know what happens?"

Q. Did you have occasion to see him at The Pud Tavern after that? A. Yes, I did.

Q. Approximately what day was this, do you recall? A. No, I can't recall exactly, but it was during the **[175]** middle of the week.

Q. What, if anything, happened when you met him in the middle of the week? A Well, after I had talked to him about—when he told me he could get the heroin, I then called Special Agent Sawyer at the DEA office where I told him that I had made a contact with the guy that I know as Michael Byers, and he stated he could get some heroin and he would be willing to sell.

Q. Did in any of your meetings at the tavern, were you ever approached by the defendant and did he ever inquire of you as to the people that you were talking about earlier in your conversations with him? A. No, no more than he had asked me did I know him and I told him yes, I did, and they was cool.

Q. Did he ever approach you and ask you—telling you that he had gotten a package and could you get in touch with—— A. Yes, he did.

Q. What was that all about, if you could tell us? A. It was late in the afternoon, I don't know the exact time, but he told me that he had got the heroin and asked me had I talked to those people, and I told him yes, I had, but I had to call them. "I got to call them back because he was at work," which I was meaning a normal working job, not a special job, anything.

[176] Q. So, then, if I understand it correctly, the first mention of heroin was by the defendant? A. Yes, it were.

Q. Let me ask you this: At any time in your engagement with the defendant did you ever have occasion to give him any heroin? A. No, I did not.

Q. Did you ever have occasion to give him any counterfeit substances? A. No, I did not.

Q. Did you ever give him any money to buy any of these things? A. No, I did not.

Q. Did you ever give him any money to buy any of these things? A. No, I did not.

Mr. Dye: No further questions, your Honor.

The Court: All right, Mr. Dye.

Mr. Lang?

Cross-Examination

By Mr Lang

Q. Now, you testified Mr. Hampton saw some tracks on your arms? A. Yes, I did.

Q. How long do tracks on your arm usually remain after you have used drugs? A. I used drugs from 1957 until some part of '60. They **[177]** last for a lifetime.

Q. You still have tracks on your arms? A. Yes, I do.

Q. You say the first conversation you ever had with Chuck about drugs was in The Pud Tavern on February 25th, is that right? A. Yes, I think it were; that's right.

Q. You never had a conversation with him earlier with respect to selling drugs to a man named Frankie? A. Yes, I did.

Mr. Dye: Your Honor, I think this is beyond the scope of my direct examination.

The Court: I know it is, but I will let him inquire.

Overruled. Go ahead.

Q. (By Mr. Lang) Well, then, your last statement was not true then that you never had a prior discussion with him about drugs, about a narcotics transaction? A. I was speaking about the narcotic transaction that happened on February 25th.

Q. That's not what I asked you about, though. I asked you had you had any prior conversation—— A. And I answered yes, I did.

Q. What was the substance of that conversation that you had with him regarding Frankie and the drug transaction?

[178] The Court: Well, now, wait a minute. I think now we're going beyond it, and I will direct you to question relating to matters—it's all right to have him explain the answer, and I think you elicited it in the proper fashion as far as the other.

Q. (By Mr. Lang) Now, your statement here that prompted Chuck's attention or put into his mind the question that you might know something about drugs was the fact he saw tracks on your arm, is that right? A. Repeat.

Q. Saw some tracks on your arm and that's what prompted his attention to engage in this conversation about drugs, is that right? A. I don't understand. Repeat that, will you?

Q. You just said that Chuck saw some tracks on your arm and because he saw these, therefore, he asked you did you know anything about to whom he could sell some narcotics? A. Well, first he asked me, he was telling me that he needed some money, and he mentioned—he mentioned heroin, said he could get some that he would be willing to sell. So I told him that I knew some people that would be willing to buy it.

Q. When did he mention the tracks on your arm? A. He never did mention the tracks. I say I was wearing a short-sleeved shirt and the tracks were visible.

[179] Q. You don't know that he saw the tracks or not? A. No, I assumed that he did.

Mr. Lang: I don't have any further questions.

The Court: All right, Mr. Lang.

Mr. Dye?

Mr. Dye: Just a few.

Redirect Examination

By Mr. Dye

Q. Since you have been back in St. Louis, have you used heroin? A. No, I have not.

Mr. Dye: No further questions.

The Court: Anything further, Mr. Lang?

Mr. Lang: No.

The Court: You may be excused.

(Witness excused.)

[197] (Whereupon, the following proceedings were had in chambers, out of the presence and hearing of the jury:)

The Court: On the record, let it be shown that we are going over the instructions with the agreement between counsel and

the court that counsel need not make any further objections at the completion of the court's reading of same to the jury, that, in other words, the objections, if any, made by counsel at this time will stand as their objections to the instructions unless otherwise noted and objected to.

Is that correct, Mr. Lang?

Mr. Lang: That's correct.

The Court: Is that correct, Mr. Dye?

Mr. Dye: That's correct.

The Court: The first instruction I intend to give—and gentlemen, express any objection, and if you want to make a record on that other question, Mr. Lang, wait till the end—is the "Members of the Jury" instruction.

Next would be the "Burden of Proof, Presumption of Innocence, and Reasonable Doubt."

Next, "consider the instructions as a whole, don't single out one."

Next, "The indictment is not evidence of guilt."

Next quotes the statutes and the indictment.

Next, the elements instruction.

Next instructs the jury to consider each act **[198]** separately, et cetera.

Next, definition of "distribute" and "deliver".

Next, definition of "knowingly".

Next is requirement of proof of specific intent.

Next is the one on circumstantial evidence.

Next, "heroin is a controlled substance."

Next, the quantity of heroin, et cetera.

Next, expert witnesses.

Next, "Evidence of defendant's previous conviction of a felony is to be considered by the jury," et cetera.

Next, "testimony of a witness may be discredited," et cetera, by showing conviction of a felony.

Next, "testimony of an informer."

Next, "The law does not compel a defendant to take the stand, imposes no duty on defendant to testify or call witnesses."

Next, "defendant, however, is a competent witness," et cetera.

Next is the credibility of witness' instruction.

Next is weight of evidence not determined by number of witnesses.

Last is the instructions concerning the verdict forms and then the verdict form.

There's no objection to any of those instructions by either party, am I correct?

[199] Mr. Lang: It is correct.

Mr. Dye: No objection.

The Court: Now, Mr. Lang, you have filed a motion that has not been ruled upon until this time relating to an entrapment instruction?

Mr. Lang: That's correct.

The Court: Do you desire to stand on that motion at this time or do you want the court to rule on it?

Mr. Lang: I don't want to stand on the motion; I would request a ruling from the court at this time.

The Court: After consideration of Mr. Lang's motion, which is on record, and it is entitled, "Defendant's Motion for a Special Jury Instruction on the Defense of Entrapment," I will overrule that motion and accordingly will not give the

proposed instruction on entrapment because it is the opinion of the court that under the evidence of this case and the law regarding entrapment that such instruction would be improper.

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[200] (Closing arguments of counsel are not included herein.)

COURT'S CHARGE TO THE JURY

The Court: Members of the Jury:

You have heard all of the testimony in this case and argument of counsel and it now becomes the Court's duty to give you the law that should govern you in your deliberation in reaching a verdict in this case.

The law applicable to this case is given to you in these instructions. It is your duty to follow all instructions. They will only be given to you orally, as I am now doing. You should bear in mind that while it may appear from time to time that I am giving you special instructions, that is not correct. The instructions I give should be received by you to apply as a whole. Don't attempt to separate and disregard part of them and use and apply the remainder.

Faithful performance by you of your duties is vital to the administration of justice. It is your duty to determine the facts, and to determine them from the evidence and the reasonable inferences arising from such evidence, and in so doing you must not indulge in guesswork and speculation.

The evidence consists of the testimony of witnesses, stipulation of counsel, and the exhibits admitted in evidence. The admission of evidence in court is governed by rules of law. From time to time it has been the duty of the attorneys to make **[201]** objections and my duty as Judge to rule on those

objections and whether you can consider certain evidence. You must not concern yourself with the objections or the Court's reasons for these rulings. You must not consider testimony or exhibits to which an objection was sustained or which has been ordered stricken.

Opening statements and closing arguments of the attorneys are intended to help you in understanding the evidence and applying the law, but they are not evidence.

You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against any party to this suit, for each party is entitled to the same fair and impartial consideration.

It has been and will be the Court's purpose to express no opinion upon the facts in this case, for that is the sole province of the jury, and if you have thought at any time during the trial that the Court has indicated any opinion with respect to the facts, you may disregard it, because I have meant nothing by voice or manner to indicate any opinion upon what is or is not a fact in this case, and if at any time during this charge you get the impression that the Court is indicating his own view with respect to the facts, remember that is not at all conclusive upon you. You and you alone shall determine what the facts are in this case.

This is a criminal case, as you know. The burden **[202]** to make out the guilt of the defendant on trial in this case is upon the government; that burden the government assumes in the beginning and carries throughout to the end, until it has met it by showing to you the guilt of the defendant beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

All of the presumptions of the law, aside from the evidence, are in favor of innocence and the defendant is presumed to be

innocent until proven guilty. This presumption of innocence attends and protects the defendant throughout the trial until it has been met and overcome by evidence coming forward in the case which shows and establishes the defendant's guilt beyond a reasonable doubt. Unless you find the defendant guilty beyond a reasonable doubt, you shall acquit them.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense—the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly. Putting it in another way, a reasonable doubt means a doubt based on reason and not the mere possibility of innocence.

In your deliberations you are not to single out one **[203]** instruction alone, but instead consider the instructions as a whole.

The indictment is not to be considered by the jury as any evidence of the defendant's guilt. It ought not, in your minds, create even a suspicion of guilt upon his part. It is merely the manner by which the case is brought before you, for your consideration, and the fact that an indictment has been returned is not to be considered as any evidence of the guilt of the defendant.

Prosecution in this case is based upon a statute which is Federal law. The statute upon which this prosecution is based reads, in pertinent part, as follows:

> ". . . It shall be unlawful for any person knowingly or intentionally . . . to . . . distribute . . . a controlled substance."

The Indictment brought under this statute reads as follows:

"The Grand Jury charges:

"That on or about the 25th day of February, 1974, in the City of St. Louis, State of Missouri, within the Eastern Division of the Eastern District of Missouri, Charles Hampton, a/k/a Michael Byers, knowingly and intentionally did distribute approximately 1.5092 grams of heroin, a Schedule I narcotic drug controlled substance.

[204] "In violation of Title 21, United States Code, Section 841(a)(1).

"Count II

"The Grand Jury further charges:

"That on or about the 26th day of February, 1974, in the City of St. Louis, State of Missouri, within the Eastern Division of the Eastern District of Missouri, Charles Hampton a/k/a Michael Byers, knowingly and intentionally did distribute approximately 1.8854 grams of heroin, a Schedule I narcotic drug controlled substance.

"In violation of Title 21, United States Code, Section 841(a)(1)."

The essential elements of these offenses, each of which the government must prove beyond a reasonable doubt, are:

First: That the defendant distributed heroin, a controlled substance; and,

Second: That the defendant did so knowingly and intentionally.

The Court instructs the jury that as you have noted a separate crime or offense is charged in each count of the indictment. Each offense and the evidence applicable thereto should be considered separately. The fact that you may find the accused guilty or not guilty of one of the offenses charged **[205]** should not control your verdict with respect to any other offense charged.

The term "distribute" means to deliver . . . a controlled substance.

The term "deliver" means the actual or constructive . . . transfer of a controlled substance.

The term "knowingly" as used in these instructions means that the act was done voluntarily and purposely and not because of a mistake or accident. Knowledge may be proved by the defendant's conduct and by all the acts and circumstances surrounding the case. No person can intentionally avoid knowledge by closing his eyes to facts which should prompt him to investigate.

The crime charged in this case is a serious crime which requires proof of specific intent before the defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the government must prove that the defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Intent may be proved by circumstantial evidence. It rarely can be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eye- **[206]** witness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit the offense charged.

You are instructed as a matter of law that heroin is a controlled substance. You must ascertain whether or not the material in question was in fact heroin. In so doing you may consider all evidence in the case which may aid in the determination of that issue, including the testimony of any expert or other witness who may testify either to support or to dispute the allegation that the material in question was heroin.

In the indictment, it is alleged that a particular amount or quantity of heroin was involved. The evidence in the case need not establish that the amount or quantity of heroin was as alleged in the indictment, but only that some measurable amount of a heroin drug was in fact the subject of the acts charged in the indictment.

The rules of evidence ordinarily do not permit witnesses to testify as to opinion or conclusions. An exception to this rule exists as to those whom we call "expert witnesses". Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion.

[207] You should conseider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

Evidence of a defendant's previous conviction of a felony is to be considered by the jury, only insofar as it may affect the credibility of the defendant as a witness, and must never be considered as evidence of guilt of the crime for which the defendant is on trial.

The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. Prior conviction does not render a witness incompetent to testify, but is merely a circumstance which you may consider in determining the credibility of the witness. It is the province of the jury to determine the weight to be given to any prior conviction as impeachment.

The testimony of an informer, or any witness whose self-interest or attitude is shown to be such as might tend to prompt testimony unfavorable to the accused, should always be considered with caution and weighed with great care.

[208] The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn, from the failure of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A defendant who wishes to testify, however, is a competent witness; and the defendant's testimony is to be judged in the same way as that of any other witness.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

[209] Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may

see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

I have caused to be prepared for you, ladies and gentlemen, a blank form of verdict. You will use the form that I shall submit to you for both Count I and Count II whether you find the defendant guilty or not guilty.

You must make a finding as to each count. When you **[210]** have unanimously agreed upon the verdict, you will insert the words "guilty" or "not guilty" as to each count as you may find and believe from all the evidence.

You have nothing to do with the punishment, that is for the Court. Your sole duty is performed when you have found upon the question of guilt or innocence of the defendant.

When you have unanimously agreed upon the verdict, one of your number will sign the verdict form as foreman and return it into Court.

Mr. Zickler.

Ladies and gentlemen, I will ask you to follow Mr. Zickler, who will lead you to the jury room where you may begin your deliberations.

* * * * * * *

United States District Court, Eastern District of Missouri
Eastern Division

(Title omitted in printing)

DEFENDANT'S MOTION FOR A SPECIAL JURY INSTRUCTION ON THE DEFENSE OF ENTRAPMENT

(Filed July 9, 1974)

Comes now defendant Charles Hampton, Jr., and moves that the Court to give the following charge to the jury, in words or in substance (hereinafter referred to as Defendant's Proposed Jury Instruction No. 1):

The defendant asserts that he was the victim of entrapment as to the crimes charged in the indictment.

If you find that the defendant's sales of narcotics were sales of narcotics supplied to him by an informer in the employ of or acting on behalf of the government, then you must acquit the defendant because the law as a matter of policy forbids his conviction in such a case.

Furthermore, under this particular defense, you need not consider the predisposition of the defendant to commit the offenses charged, because if the governmental involvement through its informer reached the point that I have just defined in your

own minds, then the predisposition of the defendant would not matter.

If, on the other hand, the jury should find beyond a reasonable doubt from the evidence in the case that the defendant's sales of narcotics were not sales of narcotics supplied to him by an informer in the employ of or acting on behalf of the government, and further, that before anything at all occurred respecting the alleged offenses involved in the case, the defendant was ready and willing to commit crimes such as charged in the indictment, whenever opportunity was afforded, and that Government officers or their agents did no more than offer the opportunity, then the jury should find that the defendant is not a victim of entrapment.

(Signature omitted in printing)

(Overruled, Nangle)

United States District Court, Eastern District of Missouri
Eastern Division

(Title omitted in printing)

ORDER

(Filed July 17, 1974)

It is hereby ordered that Defendant's Motion for a Special Jury Instruction on the Defense of Entrapment, hereintofore submitted to the Court and overruled during the course of the trial of this cause, but erroneously omitted from the record, is

hereby made a part thereof, and the Clerk is directed to make an appropriate entry in the minutes of the Court's records.

Dated: 7/17/74

/s/ JOHN F. NANGLE
Judge

United States Court of Appeals for the Eighth Circuit

No. 74-1416 September Term, 1974

The United States, Appellee, vs. Charles Hampton, a/k/a Michael Byers, Appellant.	Appeal from the United States District Court for the Eastern District of Missouri

JUDGMENT

(Filed January 9, 1975)

This cause came on to be heard on the original files of the United States District Court for the Eastern District of Missouri and briefs filed by the respective parties and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgment and commitment of the said District Court in this cause be and the same is hereby af-

firmed in accordance with the majority opinion of this Court this day filed herein.

December 11, 1974

United States Court of Appeals
For the Eighth Circuit

No. 74-1416

United States of America, Appellee, v. Charles Hampton, Also Known as Michael Byers, Appellant.	Appeal from the United States District Court for the Eastern District of Missouri.

Submitted: October 15, 1974.

Filed: December 11, 1974.

Before Heaney, Bright, and Ross, Circuit Judges.

Bright, Circuit Judge.

Charles Hampton stands convicted after a jury trial on two counts of distribution of heroin in violation of 21 U.S.C. § 841 (a)(1). The district court sentenced Hampton to five years imprisonment and a three-year parole term on each count, to be

served concurrently, but suspended the prison sentence and placed him on probation for five years. Hampton brings this appeal. We affirm the conviction.

Hampton raises two errors on appeal: (1) The trial court erred in refusing to give defendant's special instruction on entrapment, *i.e.*, if the Government in fact provided Hampton with the heroin in question by its informer, the policy of the law forbids conviction,[1] and (2) the trial court erred in permitting a special agent of the drug enforcement administration to state that the substance which had been obtained from defendant "contained heroin."

I.

We turn first to the entrapment defense as it is presented to us on this appeal. Hampton and the Government's informer, one Jules Hutton, became pool-playing friends in St. Louis. According to Hampton, he (Hampton) proposed a plan for selling a "pollutant"—a non-narcotic compound closely resembling heroin in appearance—to gullible acquantances of Hutton. Hampton testified that the plan was carried out. Informer-Hutton supplied Hampton with packets containing alleged pollutants rather than narcotics and Hampton effected two sales to friends of Hutton. These friends turned out to be federal narcotics agents. The alleged pollutant turned out to be genuine heroin.

[1] Appellant requested the following special instruction:

> The defendant asserts that he was a victim of entrapment as to the crimes charged in the indictment.
>
> If you find that the defendant's sales of narcotics were sales of narcotics supplied to him by an informer in the employ of or acting on behalf of the government, then you must acquit the defendant because the law as a matter of policy forbids his conviction in such a case.
>
> Furthermore, under this particular defense, you need not consider the predisposition of the defendant to commit the offenses charged, because if the governmental involvement through its informer reached the point that I have just defined in your own minds, then the predisposition of the defendant would not matter.

Hutton, as a Government witness, testified that Hampton had initiated the idea of selling heroin. He specifically denied giving Hampton the substances that Hampton sold to Government agents.

On this appeal, appellant makes the following statement of his entitlement to the special entrapment instruction:

> [That request] is based on what has been termed the "Government Conduct Theory" of entrapment which has its origins in the separate opinion of Mr. Justice Roberts for himself and two other Justices in *Sorrells v. United States*, 287 U.S. 435 (1932) and the concurring opinion of Mr. Justice Frankfurter, for himself and three other Justices, in *Sherman v. United States*, 356 U.S. 369 (1958).

Appellant recognizes that the Supreme Court has recently rejected a "Government conduct" theory of entrapment in *United States v. Russell*, 411 U.S. 423 (1973), but he nevertheless argues that such a theory may represent a proper basis for an entrapment defense where, as here, the defendant's version of the evidence discloses that the Government supplied the contraband without which there would be no crime.

In *United States v. Russell, supra*, an undercover narcotics agent supplied essential ingredients needed in the manufacture of an illegal drug, methamphetamine ("speed"). Russell and his codefendants were charged with unlawful manufacture, processing, and sale of that drug. Russell offered a defense of entrapment as a matter of law. He was convicted upon a jury trial. On appeal, the Ninth Circuit reversed the conviction for "an intolerable degree of governmental participation in the criminal enterprise." *United States v. Russell*, 459 F.2d 671, 673 (9th Cir. 1972). The Supreme Court on writ of certiorari

reversed and, in doing so, reaffirmed that the entrapment defense focuses essentially "on the intent or predisposition of the defendant to commit the crime." *United States v. Russell*, 411 U.S. at 429.

The respondent-Russell contended that the Ninth Circuit had properly expanded the traditional notion of entrapment to require a dismissal because of the extensive Government participation in perpetrating the alleged crime. Russell rested his claim on two theories: (a) that entrapment exists whenever the Government supplies contraband to the defendants[2] or (b) that entrapment exists when a Government investigator becomes enmeshed in criminal activity to such a degree that prosecution of the defendants is repugnant to the American criminal justice system.[3] The Court rejected these theories in *Russell* and refused to set aside the theory of the entrapment defense as based solely on predisposition and as explicated in the majority opinions in *Sorrells v. United States*, 287 U.S. 435 (1932), and *Sherman v. United States*, 356 U.S. 369 (1958).

Justice Rehnquist, speaking for the majority in *Russell* said:

> This Court's opinions in *Sorrells v. United States, supra,* and *Sherman v. United States, supra,* held that the principal element in the defense of entrapment was the defendant's predisposition to commit the crime. Respondent conceded in the Court of Appeals, as well he might, "that he may have harbored a predisposition to commit the charged offenses." 459 F.2d, at 672. Yet he argues that the jury's refusal to find entrapment under the charge submitted to it by the trial court should be overturned and the views of Justices Roberts and Frankfurter, in *Sorrells* and *Sherman*, respectively, which make the essential element of

[2] *See United States v. Bueno*, 447 F.2d 903 (5th Cir. 1971); *United States v. Chisum*, 312 F. Supp. 1307 (C. D. Cal. 1970).

[3] *See Greene v. United States*, 454 F.2d 783 (9th Cir. 1971).

> the defense turn on the type and degree of governmental conduct, be adopted as the law.
>
> We decline to overrule these cases. *Sorrells* is a precedent of long standing that has already been once reexamined in *Sherman* and implicitly there reaffirmed. [411 U.S. at 433.]

We believe that the Supreme Court's opinion in *Russell* forecloses us from considering any theory other than predisposition with respect to Hampton's entrapment defense.

We recognize that the Fifth Circuit in *United States v. Bueno*, 447 F.2d 903 (1971), held that entrapment is established as a matter of law to a charge of possessing or distributing contraband where such contraband was supplied to the defendant by a Government agent or a paid informer. In that circuit the following rules are applied: (1) Where the Government does not rebut defendant's testimony that an informer in the employ of the Government furnished the defendant the contraband, entrapment as a matter of law is established. *United States v. Bueno, supra,* 447 F.2d at 906. (2) Where the Government disputes that a Government agent or informer has furnished the contraband to the defendant, the issue is left to the jury under a special instruction to the effect that in order to convict "the jury must find beyond a reasonable doubt that the defendant did not obtain the contraband in question from the undercover agent." *United States v. Mosley*, No. 73-3336 (5th Cir., July 5, 1974), slip op. at 5395. *See United States v. Oquendo*, 490 F.2d 161 (5th Cir. 1974). The Fifth Circuit believes that its rulings pertaining to entrapment have not been eroded by the Supreme Court decision in *Russell*. *United States v. Oquendo, supra,* 490 F.2d at 163.

Prior to the decision in *Russell*, the Seventh Circuit, in common with the Fifth Circuit, had applied the entrapment defense in a case of extensive Government participation in the crime.

It held entrapment applicable to a defendant charged with counterfeiting when the evidence disclosed that federal agents participated in the scheme to the extent of arranging for and supervising the actual printing of counterfeit bills, and also determining how and when those bills would be delivered to the defendant. *United States v. McGrath*, 468 F.2d 1027 (7th Cir. 1972). The Supreme Court granted certiorari, vacated the judgment, and remanded for reconsideration in light of *United States v. Russell*. *United States v. McGrath*, 412 U.S. 936 (1973). On remand, the Seventh Circuit applied *Russell* as controlling law on appeal and held that the defense of entrapment was not available to the defendant. The court added: "We also conclude that the government agents' involvement here does not amount to the type of outrageous conduct, 'shocking to the universal sense of justice,' which *Russell* suggests might preclude prosecution on due process principles." *United States v. McGrath*, 494 F.2d 562, 563 (7th Cir. 1974).

In the present case, even under the theory offered by Hampton, Hampton made sales to third parties of substances which he represented as heroin. In light of the Supreme Court's decision in *Russell*, and the Seventh Circuit's decision in *McGrath*, we do not think that the extent of Government participation in the commission of the crime, under the facts claimed by Hampton, warrants an entrapment defense based upon Government conduct, apart from defendant's predisposition.

We believe this is a case where classic entrapment principles as explicated in *Russell*, *Sherman*, and *Sorrells* should apply, for even under Hampton's testimony, Hampton carried out the crucial acts of selling the heroin substantially on his own.[4] The

[4] Here, the jury in effect rejected Hampton's factual predicate for an intrapment defense based either upon a theory of Government conduct or upon a theory of lack of pre-disposition. Such defense would rest solely on Hampton's testimony. The court submitted the question of Hampton's intent to the jury. Hampton testified that he lacked criminal intent because Hutton had supplied a substance which the latter had represented as a pollutant. Hutton disputed that version of the facts. The jury, by returning a guilty verdict, necessarily accepted Hutton's testimony and rejected that of Hampton, and, in effect, rejected any basis for an entrapment defense.

district court, however, gave no instruction whatsoever on entrapment. Appellant has not urged the failure to give the standard entrapment instruction as error, conceding on oral argument the existence of predisposition in this case. Thus, in this appeal we are not called upon to determine whether the trial court erred in failing to give an entrapment instruction different from that which Hampton requested.[5]

II.

We have reviewed the record relating to testimony by Government agent James D. McDowell in which the agent described the substance delivered to him by Hampton as containing heroin. The trial court properly overruled the objection to the testimony for lack of foundation and hearsay. Agent McDowell related an extensive background of experience in training and performing field tests to determine the presence of heroin in a substance suspected of containing contraband. McDowell described the chemical test performed and the chemical reaction obtained from the test. From this reaction, he concluded that the tested

[5] Appellant's counsel on appeal, who was also counsel at trial, has made it very clear that he does not seek a new trial for Hampton on the basis of any error in the failure to give the standard entrapment instruction, but only for failure by the trial court to give the special instruction requested during the trial. In light of defendant's concession on oral argument that predisposition existed, a standard entrapment instruction would not have materially assisted Hampton in his defense. We note that the trial court has dealt leniently with Hampton. While imposing five-year prison sentences to be served concurrently, the court has stayed the imposition of the sentences and placed Hampton on probation while he serves a prison term under a North Carolina state conviction for armed robbery. Consequently, the failure to give any entrapment instruction will not be deemed error here.

substance contained heroin. Clearly, the trial court required the Government to lay an adequate foundation for McDowell's expert testimony, which was defined and limited in scope. His opinion thereafter was properly received into evidence. We find no error. *United States v. Atkins*, 473 F.2d 308, 313-314 (8th Cir.), *cert. denied*, 412 U.S. 931 (1973).

Affirmed.

Heaney, Circuit Judge, dissenting.

I would have this Circuit adopt the Fifth Circuit rule that entrapment is established as a matter of law to a charge of possessing contraband or distributing contraband to a government agent, where such contraband was supplied to the defendant by a government agent, including a paid informer. *See United States v. Oquendo*, 490 F.2d 161, 162-164 (5th Cir. 1974); *United States v. Bueno*, 447 F.2d 903 (5th Cir. 1971). Since the government here came forward with sufficient evidence contradicting the defendant's allegations, the jury ought to have been instructed that it must find beyond a reasonable doubt that the defendant did not obtain the contraband from the government agent. Accordingly, I would reverse and remand for a new trial.

I cannot agree with the majority that the Supreme Court's opinion in *United States v. Russell*, 411 U.S. 423 (1973), "forecloses us from considering any theory other than predisposition." For that case explicitly acknowledged that there may be cases where government conduct is "so outrageous that due process principles would absolutely bar the government from invoking the judicial processes to obtain a conviction." *Id.* at 431-432. Predisposition is emphatically not a bar to the invocation of this due process defense.

On the contrary, I agree with the Fifth Circuit that the *Bueno* rule survives *Russell* because that rule is aimed precisely at the outrageous situation where

> * * * the government buy[s] heroin from itself, through an intermediary, the defendant, and then charg[es] him with the crime. * * *

United States v. Bueno, supra at 905.

To hold, as the majority seems to say, that *Russell* emasculated *Bueno*, is to overlook the fact that the *Russell* Court specifically noted that the facts in *Russell* did not fall within the *Bueno* rationale because the chemical supplied to defendant Russell was not itself contraband. *United States v. Russell, supra* at 432.

Not even the Supreme Court has focused so rigidly and exclusively on predisposition as this Court does today. In the future, it is difficult to see how any defendant in this Circuit can possibly raise the due process defense which the *Russell* Court sought to leave open. I respectfully dissent.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit